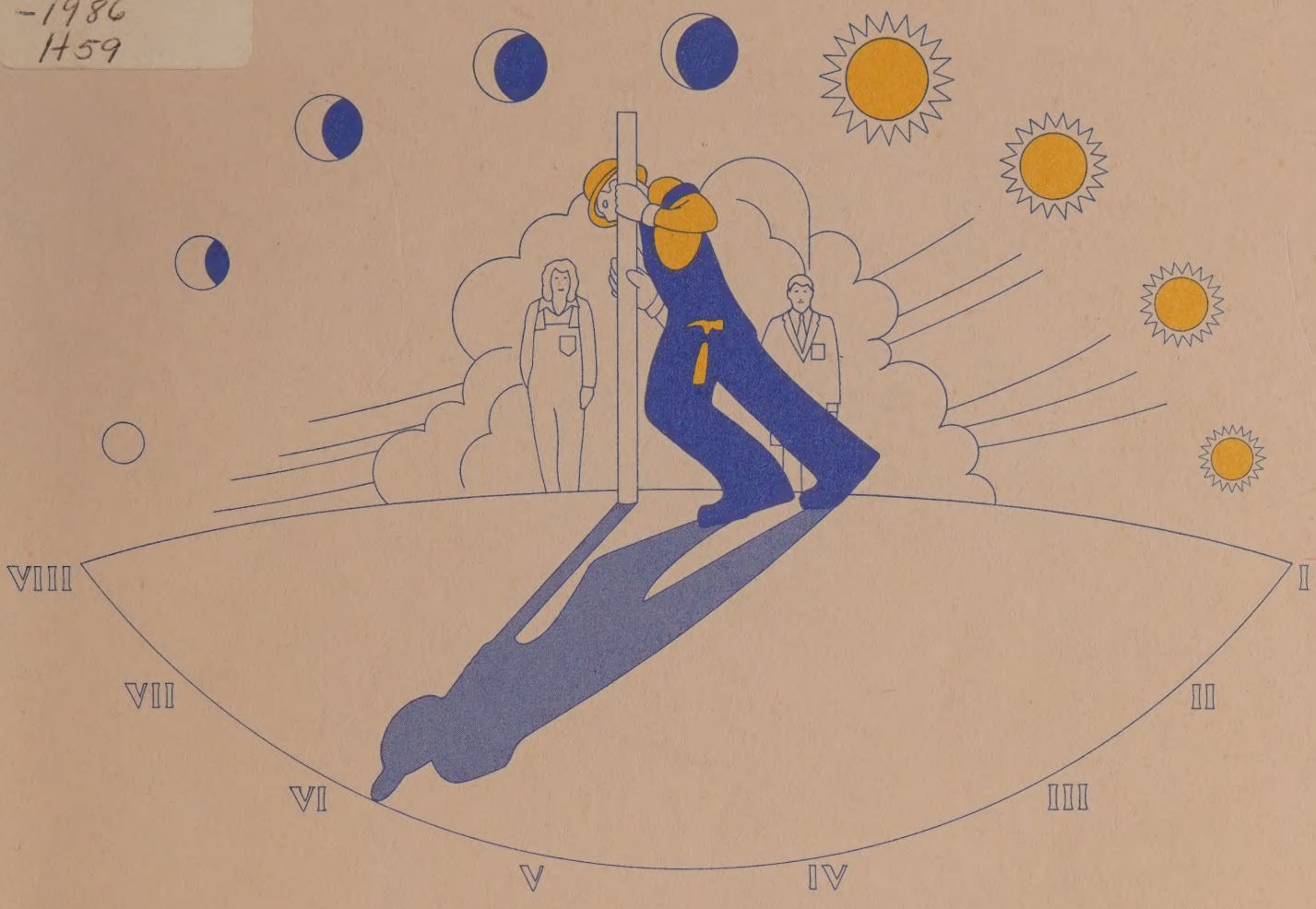
Ontario Task Force
on Hours of Work
and Overtime

Groupe d'étude de l'Ontario
sur les heures de travail et
les heures supplémentaires



Working Times: Phase II
The Report of the Ontario Task Force on Hours of Work and Overtime

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and Overtime

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October 1987

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The Honourable Gregory Sorbara
Minister of Labour
Government of Ontario
Toronto, Ontario

Dear Mr. Sorbara:

We are pleased to submit to you the Phase II Report of the Task Force on Hours of Work and Overtime.

This Report is an extension of the one submitted in May 1987, which considered the job-creation impacts for the Province of such factors as the standard workweek, the need for overtime, and the regulatory process.

Our Phase II Report deals specifically with the many special treatments, exemptions, and exceptions in the Employment Standards Act which apply to the hours of work and overtime provisions. We focus attention on four groups of workers: those employed in agriculture, as domestics, in trucking, and in construction. In so doing, we consider whether a common approach could be established for reviewing the numerous other groups that receive special status under the Act.

We offer a number of recommendations dealing with special treatment, exemptions, and exceptions. These relate specifically to the four groups considered as well as to general issues pertaining to special treatment.

We hope that our research efforts and our recommendations will be useful to the Province as it reviews changes in Ontario's "working times".

Yours sincerely,

Arthur Donner

Arthur Donner
Chairman

Judith Andrew

Fitz. Allison

Sam Gindin

Bill Stetson

Working Times: Phase II
The Report of the Ontario Task Force on Hours of Work and Overtime

October 1987

Contents

CHAPTER 1

Introduction, Highlights, and Summary of Recommendations

Background to the Phase II Report

In our first report, dated May 1987, the Task Force reviewed the job-creating impacts of a wide number of worktime factors, including the standard workweek, overtime work, and the regulatory process. The Task Force report and many of the resulting 22 recommendations dealt specifically with the regulations and the coverage of the hours-of-work and overtime provisions of the Employment Standards Act.

It also became clear to the members of the Task Force quite early in our deliberations that, under the Act, the work activities of many employees in Ontario are treated differently. In order to introduce flexibility into a somewhat rigid set of regulations governing hours of work and overtime, a complicated and rather bewildering structure of special treatments, exceptions, and exemptions had emerged in Ontario. As the legislation currently stands, some employees are exempt from some or all of the hours-related aspects of the Act, others have special overtime provisions, and others receive special treatment in a variety of ways — including special permits and special regulations.

These special treatments loom surprisingly large in terms of the total coverage of the Act. The Task Force estimates that 866,000 employees representing 24.8 per cent of Ontario's paid employees were exempt from the hours-of-work provisions of the Act in 1986; some 728,000 employees, or 20.8 per cent of the paid workforce, were exempt from the overtime provisions (Table 4.6 of *Working Times: The Report of the Task Force on Hours of Work and Overtime*, hereafter referred to as the Phase I Report).

Accordingly, the Task Force decided to undertake a separate phase of work and to commission separate research studies relating to special treatment and to exemptions from the hours-of-work and overtime provisions of the Employment Standards Act. Since special treatment is so extensive an area, the Task Force chose to focus its attention on four groups of workers (those employed in agriculture, construction, trucking, or as domestics) who have, for a variety of reasons, achieved a certain amount of public attention. The objective was to determine whether such special treatment merits being continued, altered, or revoked. It was the intent of the Task Force not only to offer recommendations relating to these four groups, but also to determine whether a common approach could be established for reviewing the numerous other groups which receive special status under the Act.

Uniformity versus Special Treatment

When legislative initiatives are being considered, governments must often balance the advantages of unifomity of treatment against the recognition of special needs of particular groups or circumstances. When all groups or situations are fairly similar, then uniformity of treatment has the appeal of fairness, simplicity, and ease of monitoring. In the area of labour standards, however, there is recognition that the labour market is heterogeneous. The characteristics of employees, employers and employment situations may vary widely, and hence uniformity of treatment may impose hardships on some groups. This in turn can lead to compliance problems.

Special legislative provisions for particular groups can exist for a variety of reasons. Different groups of employees may have different degrees of bargaining power and, hence, different needs for employment protection. Different groups of employers may have different needs for hours-of-work arrangements; thus, uniform regulations may have substantially different effects which, in turn, may or may not be desirable. Differential treatment also may simply reflect the power or ability of special interest groups to utilize the political or administrative process to secure preferential treatment. Once such treatment is granted, it can become almost a historic property right that is difficult to change.

Ontario's legislation on hours of work and overtime is no exception regarding this need to strike a balance between uniformity and special treatment. Ontario's current legislation on hours of work originated in the Factories Act of 1884. That original legislation, for that time, had very stringent maximums of 10 hours per day and 60 hours per week; however, this applied only to women and youths, and, hence, had very limited coverage. The basic format of today's legislation emanated from the 1944 Hours of Work and Vacations with Pay Act. That legislation also set standards, with maximums of 8 hours per day

and 48 hours per week, to apply to a broader spectrum of the workforce. These maximums were in 1944 the current practice for slightly over half of the workforce. With such a large portion of the workforce being potentially constrained by the legislation, exemptions and special treatment were almost inevitable in order to provide a degree of flexibility. As noted, flexibility was to be attained in various ways: exclusions from the Act; exemptions from some or all of the hours, overtime, public holiday, and vacation provisions; special overtime provisions; and an elaborate permit system.

In essence, special treatment has always been a prominent feature of Ontario's hours-of-work and overtime legislation. This is true from its origins, when it provided special treatment to women and youths only, who allegedly were in need of such protection. And it was true when the coverage was broadened and the maximums made so stringent that they would have dramatically affected most of the workforce unless special treatment were provided.

Recapitulation of Phase I Recommendations

The Phase I Report dealt with the *general* issues pertaining to how flexibility should be attained, largely through a recommended modification of the permit system. The Task Force recommended that the current limitation on weekly hours of 48, after which a 100-hour annual overtime permit must be obtained, should be replaced by an annual block of 250 overtime hours per employee, in excess of a new standard workweek of 40 hours. The new standard workweek of 40 hours would also be the trigger after which the time-and-one-half overtime premium would apply (compared with the old trigger of 44 hours) and after which overtime must be voluntary (compared with the old level of 48 hours). In essence, considerable streamlining was involved, with a new standard workweek of 40 hours being the norm after which hours are defined as overtime hours for purposes of debiting the annual block of 250 permitted hours. It was also to be the standard for requiring the overtime premium, and providing employees with the right to refuse overtime. In addition to this streamlining, flexibility was recommended in various forms: a phasing-in of the 250-hour block grant; accommodating compressed work schedules and averaging provisions; the possibility of an additional permit beyond the 250-hour block grant; and allowing compensatory time-off at the premium rate when both parties are in agreement.

While Phase I dealt with these general issues, Phase II was to deal with the issue of special treatment for particular groups. The Task Force focussed special attention on four sectors — agriculture, domestic employment, trucking, and construction. These are sectors that have peculiar characteristics with respect to their worktime practices, and they are currently given special treatment in one form or another. While focussing on these four sectors, the intent of the Task Force is also to suggest some guiding principles that may prove useful for dealing with other groups that receive special treatment or may seek such special treatment in the future.

Highlights and Summary of Recommendations

As outlined in greater detail in the subsequent chapters, the main conclusions can be highlighted as follows:

General Issues Pertaining to Special Treatment (Chapter 2)

- In deciding upon special treatment, it is important not to focus on whether the groups under review should be covered by the worktime provisions, since that issue has been decided in the affirmative for the majority of the workforce. Rather, the focus should be on whether the particular groups are sufficiently different from the norm to merit different treatment from what is commonly provided to others.
- The special treatment should also be evaluated in light of the main rationales for regulating worktime practices: worksharing, health and safety, and the provision of a minimal safety net or acceptable community standards.
- The main options for special treatment are: exemptions from all or some worktime provisions; special overtime triggers; special industry permits and special designated occupational permits. These options must also be viewed in light of the availability of the special discretionary green permits, for which all employers currently can apply.
- Special treatment can also be provided in various forms. In descending order of their degree of permanence, these are: treatment in the Act itself; Regulations emanating from the Act; or administrative discretion of the Director.
- In analyzing the current practice with respect to these options, it is clear that there is often some rationale for special treatment; however, there also appear to be inconsistencies, unanswered questions, and antiquated practices, suggesting that, in many cases, the special treatment merits re-examination before it is continued.
- Such re-examination could be conducted by a small internal review committee, approximately every five years, focussing on the special areas in which worktime problems are most prominent.
- The emphasis should be on minimizing or eliminating the special treatment where it is no longer relevant, although such streamlining should be done in a phased fashion to minimize adverse consequences.

Agriculture (Chapter 3)

- The main characteristics of agriculture that affect its worktime practices and their regulations are: diversity across farms with respect to worktime needs; the need for long hours emanating from

such factors as seasons, weather, and crop disease; the continued dominance of the small family farm; dramatic technological changes; cost concerns; and diversity regarding the nature of farmwork itself.

- In other Canadian jurisdictions and in the United States, all or most farm workers are exempt from all or most of the worktime employment standards. Outside Ontario, there is some precedence in North America for paid public holidays and vacations. In Europe, farm workers are typically covered by the legislation as well as by centralized collective bargaining.
- Long hours are more prominent in agriculture than in any other industry.
- Overtime premiums are not common private practice. Paid holidays and vacations appear to be more common even though they are not usually required by law.
- Employers in agriculture regard long hours as a necessary and natural ingredient of the job, and, hence, they would regard maximum-hours limits as the most difficult option to adapt to, followed by overtime premiums and then paid vacations and holidays.
- Employees also tend to regard long hours as a natural component of agricultural work, and, given the short season and low wages, they often need the long hours to earn sufficient income.
- The main rationale for regulating agricultural hours would be to provide agricultural workers with the same safety net and community standards provided to other workers. Job-creation opportunities are unlikely to be prominent, while any health and safety concerns are likely to be better handled through health and safety legislation than through employment standards.
- Table 1.1 highlights the Task Force's recommended changes and contrasts them with the current legislation. Basically, the recommendations involve extending the requirement for paid vacations and paid public holidays so that all agricultural workers are now covered under those provisions.

Domestics (Chapter 4)

- The main characteristics of domestic employment that affect the treatment of domestics under the Employment Standards Act are the informality of many employment relationships; the difficulty of determining and monitoring working time; and the linking of the hours of work of domestics to the working time of the householders.
- The different categories of domestic labour (domestics, nannies, babysitters, companions, homemakers), and the distinctions between full-time versus part-time and live-in versus live-out, make it very difficult to determine coverage under the Act, which in turn makes it difficult for employers to know their obligations and employees their rights.
- The bargaining power of the visa domestics, who are required to live in, is severely compromised by

Table 1.1
Current and Recommended Worktime Legislation, Agriculture

Agriculture Subsector	Maximum Hours (Part IV)	Overtime Premium/ Trigger (Part V)	Public Holidays (Part VII)	Paid Vacations (Part VIII)	Right to Refuse Overtime	Time-off in Lieu
Current Legislation						
Directly related to primary production[a]	Exempt	Exempt	Exempt	Exempt	Exempt	None
Other related occupations[b]	Exempt	Exempt	Exempt	Covered	Exempt	None
Fruit, vegetable, & tobacco harvesters[c]	Exempt	Exempt	Covered	Covered	Exempt	None
Recommendations						
Directly related to primary production[a]	Exempt	Exempt	**COVER**	**COVER**	Exempt	None
Other related occupations[b]	Exempt	Exempt	**COVER**	Covered	Exempt	None
Fruit, vegetable, & tobacco harvesters[c]	Exempt	Exempt	Covered	Covered	Exempt	None

[a] Production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, and poultry.
[b] Landscape gardening; growing of mushrooms, flowers, trees and shrubs; growing, transportation and laying of sod; breeding and boarding of horses; keeping of fur-bearing animals.
[c] If employed for 13 weeks or more.
Note: Bold type denotes that the recommendation involves a change from the current legislation.

the fact that they cannot do work other than domestic work for the two-year period of the visa program, although they can change employers.

- Comprehensive data are not available on the hours of work of domestics. One source reports an average of 41 hours per week and another reports 65 hours per week.
- Domestics themselves have expressed that their main concern is over the amount they are paid for overtime, followed by salary, and then the amount of overtime and number of weekly hours they are required to work. Live-in domestics have expressed considerably more dissatisfaction with employment arrangements than live-outs.
- If faced with an overtime premium of time-and-one-half after 44 hours, about one-third of employers of domestics said they would reduce their use of domestics, mainly by not working them overtime but also by not employing domestics.
- The main rationale for regulating the hours of domestics pertains to providing a safety net of minimal standards to a disadvantaged group with little bargaining power. Health and safety and job creation are unlikely to be major issues for domestics under employment standards legislation.
- Table 1.2 highlights the Task Force's recommended changes and contrasts them with the current legislation. Basically, the main recommendations involve endorsing the recent initiatives that were made, effective October 1, 1987, but allowing the time-off-in-lieu option to be taken within 12 months rather than within 12 weeks from when the overtime is worked. As well, the Task Force recommends that a right to refuse overtime should be granted after 50 hours for full-time domestics or nannies, and for full-time live-in sitters. (This is less than the 40 hours recommended in Phase I for the general workforce; however, it is comparable to the current practice of 48 hours granted to most workers, but not to domestics.)
- The Task Force also recommends that (1) the Provincial government should lobby the federal government to change existing tax provisions to make childcare expenses fully deductible; and (2) following the completion of the work done by the inter-ministerial committee, the Ministry should consider changing the legislative status of companions. The Task Force sees little rationale for treating companions differently from full-time domestics, nannies, and sitters.

Table 1.2
Current and Recommended Worktime Legislation, Domestics

Type of Domestic Employment	Maximum Hours (Part IV)	Overtime Premium/ Trigger (Part V)	Public Holidays (Part VII)	Paid Vacations (Part VIII)	Right to Refuse Overtime	Time-off in Lieu
Current Legislation (Includes Changes as of October 1, 1987)						
Full-time domestic or nanny;[a] and full-time live-in sitter	Exempt	1.5 at 44	Covered	Covered	Exempt	at 44
Part-time domestic;[a] part-time or live-out sitter; and companion	Exempt	Exempt	Exempt	Exempt	Exempt	None
Recommendations[c] (Includes Endorsing October 1, 1987 Changes)						
Full-time domestic or nanny;[a] and full-time live-in sitter	Exempt	1.5 at 44	Covered	Covered	**AT 50**	**AT 44[b]**
Part-time domestic;[a] part-time or live-out sitter; and companion	Exempt	Exempt	Exempt	Exempt	Exempt	None

[a] Both live-ins and live-outs.
[b] Allowed to take within 12 months rather than the current 12 weeks.
[c] Other recommendations are: The Provincial government should lobby the federal government to change tax provisions to make childcare expenses fully deductible. The Ministry should consider changing the legislative status of companions following the completion of the work done by the inter-ministerial committee. The Task Force sees little rationale for treating companions differently from full-time domestics, nannies, and sitters.
Note: Bold type denotes that the recommendation involves a change from the current legislation.

Trucking (Chapter 5)

- The main characteristics of trucking that affect its worktime practices and their regulation are: a complex and diverse structure with respect to type of carrier, jurisdiction, and goods handled; dependence upon weather, road conditions, and the worktime practices of customers; the usual situation of one driver per vehicle, with the driver often being far from home base.
- Deregulation on the product-market side is having a dramatic effect on the industry, with numerous consequences for regulating hours of work. Those consequences include: less scope for regulating hours because of the growing number of owner/operators who are not covered by the Act; less protection from collective agreements because unionization has declined; and more resistance on the part of trucking companies to the cost consequences of worktime regulations, given the fiercely competitive practices.
- As indicated in Table 1.3, most drivers have a maximum workweek of 60 hours, largely through the industry permits. They also have a special overtime trigger at 50 hours in local cartage and 60 in highway transport. Otherwise, they have the usual regulations pertaining to worktime practices, including the overtime trigger of 44 hours for the private not-for-hire fleets of companies.
- Federal legislation is fairly similar to Ontario's practices, although most other Canadian jurisdictions tend not to have special provisions for trucking. Similarly, in the United States special provisions are not provided for trucking; the normal provisions apply, involving the overtime premium of time-and-one-half after 40 hours. Because maximum-hoursinsert table 3legislation otherwise does not exist in the United States, maximum hours for drivers are regulated by highway safety legislation.
- Within Ontario's occupational groups, transportation workers have the highest incidence of long hours and the highest average workweek. Overtime premiums are not likely to be common, except for the not-for-hire private fleets of companies (where the legislative trigger of 44 hours applies) and for unionized employees (where 40 hours is the common trigger).
- Currently, a national safety code is being developed for trucking. This code will establish maximum hours for the purposes of public safety, which is a prime rationale for such regulation.
- Table 1.3 highlights the recommended changes. Basically, the recommended changes are that maximum hours should be set by the new national safety code for the purposes of public safety. Streamlining and consistency between local cartage and highway transport should be provided by both having the same overtime trigger and right to refuse overtime at 50 hours as well as the option of compensatory time-off in lieu at the premium rate, if mutually agreed. Drivers in the private, not-for-hire fleets of companies would continue to have the usual provisions of their industry (although subject to the maximum hours of the national safety code). If the Phase I recommendations are adopted that would mean time-and-one-half after 40 hours, with the right to refuse and the lieu-time option at that same standard workweek of 40 hours.

Table 1.3
Current and Recommended Worktime Legislation, Truck Drivers

Trucking Subsector	Maximum Hours (Part IV)	Overtime Premium/ Trigger (Part V)	Public Holidays (Part VII)	Paid Vacations (Part VIII)	Right to Refuse Overtime	Time-off in Lieu
			Current Legislation			
Local cartage	60[a]	1.5 at 50	Covered	Covered	8 & 48	None
Highway transport	60[a]	1.5 at 60	Covered	Covered	8 & 48	None
Private fleets of companies	60[b]	1.5 at 44	Covered	Covered	8 & 48	None
			Recommendations			
Local cartage	**TO BE SET**	1.5 at 50	Covered	Covered	**AT 50**	**AT 50**
Highway transport	**BY NEW NATIONAL**	**1.5 AT 50**	Covered	Covered	**AT 50**	**AT 50**
Private fleets of companies	**SAFETY ACT**	**1.5 AT 40**	Covered	Covered	**AT 40**	**AT 40**

[a] Legislative maximum of 48, plus an additional 12 per week under the industry permit.
[b] Drivers in the private not-for-hire fleets of companies are subject to the provisions of the industry of their company. Normal provisions are for a maximum of 8 per day and 48 per week. However, in many circumstances industry permits have been granted which provide an additional 12 hours per week for drivers or their helpers.
Note: Bold type denotes that the recommendation involves a change from the current legislation.

Construction (Chapter 6)

- The main characteristics of construction that affect its worktime practices and their regulation are: a complex and diverse structure with different sectors and trades; short seasons and a short and uncertain life of many projects; nonfixed worksites with irregular and intermittent employment; small firms and often informal work practices; and extensive unionization and coverage under fair wage and worktime practices for government contracts.
- Most other Canadian jurisdictions, including Ontario, give special treatment to construction, although the patterns are not always uniform. Generally, the legislation in the other jurisdictions is not quite as lenient to employers as it is in Ontario. In some jurisdictions and in the United States, construction workers are not given special treatment with respect to worktime practices under employment standards.
- As an industry, construction is second only to agriculture in the proportion of its workforce that works long hours.
- In the unionized sector, there is substantial variation in the negotiated worktime practices across sectors. Typical overtime premiums and standard workweeks negotiated in collective agreements are: double time after 8 hours per day and 40 per week (often after fewer hours) in the industrial, commercial, and institutional sector; time-and-one-half after 8 hours per day and 40 per week (often after more hours) in the residential sector; time-and-one-half after 10 hours per day and 50 per week (often after more hours) in the areas of roadbuilding and sewers and watermains.
- Grievance arbitration over hours-of-work and overtime issues is not common in construction.
- Restrictions on long hours in construction are not likely to lead to substantial job creation because of the prevalence of moonlighting and difficulties created by multiple shifts and skill shortages.
- The relationship between long hours and health and safety is sufficiently complex to merit being handled through legislation on health and safety rather than hours of work.
- The rationale of providing a minimal safety net is quite weak since many construction workers are relatively advantaged in terms of the protection of a collective agreement or the schedule of a government contract.
- Using collective agreements as a norm would suggest focussing on the use of overtime premiums and having later triggers for workers on roads, sewers and watermains.
- Table 1.4 summarizes the main worktime recommendations as well as the current legislation. The basic recommended changes involve: have general

Table 1.4
Current and Recommended Worktime Legislation, Construction

Construction Subsector	Maximum Hours (Part IV)	Overtime Premium/ Trigger (Part V)	Public Holidays (Part VII)	Paid Vacations (Part VIII)	Right to Refuse Overtime	Time-off in Lieu
		Current Legislation				
General construction	Exempt	1.5 at 44	Covered	Covered	8 & 48	None
Roadbuilding (streets, highways, parking lots)	Exempt	1.5 at 55[a]	Covered	Covered	8 & 48	None
Roadbuilding (bridges, tunnels, retaining walls)	Exempt	1.5 at 50	Covered	Covered	8 & 48	None
Sewers and watermains	Exempt	1.5 at 50	Covered	Covered	8 & 48	None
		Recommendations				
General construction	Exempt	**1.5 AT 40**	Covered	Covered	**AT 40**	**AT 40**
Roadbuilding (streets, highways, parking lots)	Exempt	**1.5 AT 50**	Covered	Covered	**AT 50**	**AT 50**
Roadbuilding (bridges, tunnels, retaining walls)	Exempt	1.5 at 50	Covered	Covered	**AT 50**	**AT 50**
Sewers and watermains	Exempt	1.5 at 50	Covered	Covered	**AT 50**	**AT 50**

[a] Subject to averaging provisions.
Note: Bold type denotes that the recommendation involves a change from the current legislation.

construction move to the standard workweek of 40 hours (for purposes of the overtime premium, the right to refuse, and lieu-time), which is consistent with the Phase I recommendations for the general workforce; have a 50-hour standard workweek prevail in the roadbuilding and the sewers and watermains sectors; and allow the option of time-off in lieu of overtime, if mutually agreed.

LISTING OF RECOMMENDATIONS (CHAPTER 7)

The recommendations for each of the four sectors have already been highlighted in the relevant tables and text of the previous summary. The following are the recommendations of the Task Force. A full discussion of the rationale for each recommendation is presented in Chapter 7.

General Recommendations

1. Repeal subsection 20(1) (a) of the Employment Standards Act which provides 12 excess hours per week for specified categories of employees.
2. The Employment Standards Branch should monitor requests for permits (beyond the 250-hour block) arising from the deletion of subsection 20 (1) (a) of the Act, especially with regard to maintenance workers. If experience demonstrates that there is a continuing requirement for hours in excess of the 250-hour block, the number of hours in the block grant for maintenance workers (or others) should be increased.
3. The Employment Standards Branch should update section 19 of the Act to reflect the changing industrial composition of the Province (to a larger proportion of nonmanufacturing and service employment and, within manufacturing, to more high-technology industry) and to take into account the additional pressures on this section which are likely to emerge following the implementation of the Task Force's Phase I recommendations.
4. The information on which a decision is based to work excess hours under section 19 of the Act shall be shared with the union (or other representative of the employees) upon request.
5. The Ministry should review exceptions to and exemptions from the hours-of-work provisions of the Employment Standards Act, using the following guidelines:
   - The Review should be done by a small group within the Ministry of Labour, drawing upon the resources of other parties, as needed.
   - Some form of public consultation should occur, eliciting input from interested parties.
   - The original rationale for special treatment should be examined when information is available.
   - The actual practices and experience of the exempt group should be studied, including the capability of self-regulation. The focus should be on showing why the group under consideration should be treated differently from the norm.
   - The emphasis should be on providing uniformity of treatment, or limiting exemptions, and on minimizing or eliminating special treatment.
   - The total review should be completed within 5 years.
   - Priority should be given to the review of industry permits.
6. The Ministry of Labour should consult with labour and management in those industries currently holding industry permits regarding the need for hours beyond the 250-block grant. Industry permits should be re-issued as needed following the consultation process.

Agriculture

7. Extend coverage of Part VII of the Act — Public Holidays — to all agricultural employees.
8. Include agriculture in the list of industries in subsection 26(5) in which the employer may require the employee to work on a public holiday and reschedule an alternative day off with pay.
9. Extend coverage of Part VIII of the Act — Vacations with Pay — to all agricultural employees.

Domestics

10. Full-time live-in and live-out domestics and nannies, and full-time live-in sitters should have the right to refuse work after 50 hours per week.
11. Time-off in lieu could be taken upon mutual agreement between the employee and employer within one calendar year of being earned (rather than within 12 weeks, as in regulation 308/87).
12. The Ministry of Labour should consider changing the legislative status of companions following the completion of work by an interministerial committee that is now looking at this issue. Cost (to government) would not be seen as an acceptable argument for continued exemption from coverage.
13. The provincial government should lobby the federal government to change income tax provisions to make childcare expenses fully deductible.

Trucking

14. Maximum hours for drivers should be set in the National Safety Act and enforced, in Ontario, by the Ministry of Transportation and Communications. The Employment Standards Act should set its standards to be compatible with those of the National Safety Act so as to ensure complete coverage.
15. Operators, and drivers and helpers in local cartage and highway transport should receive overtime premium pay after 50 hours per week; private carriers after 40 hours per week.
16. Operators, and drivers and helpers in local cartage and highway transport should have the right to refuse work after 50 hours per week. All others in the industry would be able to refuse after 40 hours per week.
17. The time-off-in-lieu provision recommended by

the Task Force in Phase I should apply to all employees in the industry.

Construction

18. On-site workers in the roadbuilding and sewer and watermain sectors of the industry should receive premium pay for work after 50 hours per week.
19. On-site workers in the roadbuilding and sewer and watermain sectors of the industry should have the right to refuse work after 50 hours per week. All other employees in construction should have the right to refuse after 40 hours per week.
20. The time-off-in-lieu provision recommended by the Task Force in Phase I should apply to all employees in the industry.

CHAPTER 2

Special Treatment: Some General Issues

Before dealing with the special problems of the four groups under study — agriculture, domestics, trucking, and construction — it is worth highlighting some general issues pertaining to the treatment of special groups. Those general issues, which are the focus of this chapter, include the broad rationales for special treatment, the alternative procedures for dealing with special cases, a review process for handling other special cases and new ones as they arise, and the definition of urgent work. The last issue relates to the special cases because many of the requests for special treatment arise out of what is believed to be urgent work.

In dealing with the issue of special treatment, this chapter draws on a background report prepared for the Task force by Donald Dewees, *Special Treatment Under Ontario's Hours of Work and Overtime Legislation: General Issues*. That report is also relevant to *Working Times: The Report of the Ontario Task Force on Hours of Work and Overtime* (hereafter referred to as the Task Force's Phase I Report), since it deals with the pros and cons of alternative policy options, including permits and overtime premiums. As well, this chapter builds upon Chapter 4 of the Phase I Report, which should be consulted for background data.

General Rationales for Special Treatment

In considering the appropriate way to provide special treatment, if such special treatment is merited at all, it is important to keep in mind that the relevant question should not be: "Should particular sectors, like agriculture, domestic employment, trucking and construction, be subject to maximum-hours restrictions and overtime premiums?" That question requires an answer to the one of whether maximum-hours provisions and overtime premiums are appropriate in general, and, if they are, is the rationale also appropriate for the particular sectors.

The appropriateness of such provisions, in a general sense, may be a difficult issue, but for the majority of the workforce (where such maximum hours and overtime regulations apply) the question has already been answered — and in the affirmative. Thus, the appropriate question is: "Are the special sectors sufficiently different from the other sectors to merit their being treated differently from other sectors, with respect to the legislative regulations of worktime practices?" This question focusses the debate on the differences between the specific sectors and the other sectors, rather than on the broader issue of the appropriateness in general of regulations on maximum hours and overtime practices. The relevant issue is whether the general rationale also applies to the particular sectors.

The issue of special treatment must be analyzed in the context of the general rationales for regulating worktime practices. As discussed in the Phase I Report, there have been three main potential rationales for regulating hours of work and overtime. First, restricting hours of work and overtime may lead to new jobs, which in turn could reduce unemployment. In the Phase I Report, the Task Force concluded that the job-creation potential from restricting hours of work and overtime is likely to be very limited for the general workforce.

A second rationale for restricting hours of work and overtime pertains to health and safety. In the Phase I Report, the Task Force concluded that the empirical evidence does not enable one to isolate the independent effect of long hours on health and safety. The relationship is sufficiently complex, and likely to be different from one work environment to the next, that the health and safety issues are best handled through legislation on health and safety rather than hours of work.

A third rationale for regulating hours of work emanates from the broader rationale for employment standards in general. That broader rationale covers three degrees of intervention: providing a minimum safety net for individuals with little bargaining power; reflecting a community norm based upon collective agreements, common personnel practices, public opinion, and practices in other jurisdictions; and providing a leading-edge example to introduce new social policies. Since the issues concerning the special sectors analyzed in this Report pertain to whether these sectors should continue to be exempt from some or all of the worktime practices, the focus is on catching up to the community norm, certainly not on setting a leading-edge example. Therefore, the relevant consideration here pertains to providing a minimum safety

net or acceptable community standards.

In summary, the decision to continue to provide special treatment, with respect to the regulations of worktime practices, should depend upon whether the particular sectors are sufficiently different from other sectors to merit special consideration. This decision also must be analyzed in the general context of the various rationales for regulating hours of work: worksharing, health and safety, and the provision of a minimum safety net and acceptable community standards.

Alternative Procedures for Dealing with Special Cases

In dealing with the special problems of particular groups, there are a variety of options open and, in fact, followed, under current practice. Obvious exclusion from the Employment Standards Act itself is the most general exemption. Currently, this general exclusion applies only to workers under the federal jurisdiction and to students or inmates in special programs. This option, however, is beyond the mandate of the Task Force, which is to focus on the aspects of the Act dealing with worktime standards, namely maximum hours, overtime, and public holidays and vacations. In addition, the rationale for establishing the Task Force did not involve a broadening of the exemptions; rather, it related to considerations of more stringent restrictions on hours of work, in part in the hope that such restrictions would lead to the creation of new jobs for the unemployed.

In addition to this option of a general exclusion from the Act, there are six main policy options for dealing with the special worktime issues pertaining to special groups. In approximately descending order of leniency toward employers in terms of exempting them from all or some of the worktime provisions of the Act, these options can be categorized as:

1. Exemption from *all* the maximum-hours, overtime, public holiday, and vacation pay provisions.
2. Exemption from one or more, but not all, of the specific provisions pertaining to maximum-hours, overtime, public holidays and vacation pay provisions.
3. A special *overtime* trigger whereby the overtime premium commences after a greater number of hours, usually 50-60 hours, rather than after the standard 44 hours.
4. Special industry permits, currently granted to 26 industries, granting permanent special status.
5. Special treatment for a number of designated occupations, termed "specified categories of employees," for whom an additional 12 hours per week beyond the maximum workweek of 48 hours is allowed. (Although this is special treatment for certain designated occupations, it is part of the normal permit system, granted in conjunction with the 100 hour per year permit that is issued virtually automatically on request, or as part of the 26 industry permits.)
6. Special (green) permits designed to provide residual flexibility under special circumstances and usually to particular groups.

Although many of these special treatments are interrelated, they also substitute somewhat for one another. That is, a particular group of employees could be given special treatment in any of the above ways, or its status could be changed from one way of receiving special treatment to another. In addition, a group could be given special treatment with respect to other policy options, notably the right to refuse overtime or the provision of time-off in lieu of overtime. As well, other options that are not current legislative practice are possible (for example, double-time premiums).

The six main current practices for dealing with special cases will be now expanded upon in turn.

Exemption from All the Worktime Provisions

Exemptions from all the worktime provisions are provided to Crown employees under Section 11 of the Interpretation Act and, under Regulation 285 section 3, to a variety of other groups including professionals, teachers, persons engaged in commercial fishing, most farm workers, companions, and part-time domestics. Presumably, Crown employees are exempt because the Crown would not demand unreasonable hours from its employees, and, currently at least, there is the protection of a centralized collective agreement. Professionals and teachers are exempt, in part because they are deemed to have sufficient individual bargaining power and the nature of their work is such that it is often not "geared to the time clock." Each is also subject to separate governing legislation. As discussed subsequently, the rationale for exemptions for certain other groups, such as farm workers and sitters, companions, and part-time domestics, is quite different, being based on factors such as nonstandard working hours, informal work arrangements, and monitoring problems.

Although there appear to be rationales for the general exclusions — the treatment of these groups is not simply capricious — there are also some legitimate questions that can be raised. For instance, although professionals may have sufficient individual bargaining power, the health and safety of patients or clients may be jeopardized by long hours. Further, restricting hours could lead to worksharing within the professions.

For persons employed in commercial fishing or in farming, or as sitters, companions, or part-time domestics, the regulation of long hours may be difficult to enforce or even impractical; however, paid public holiday or vacation provisions may not be so impractical a consideration, especially when they can involve pay in lieu of the actual holiday or vacation time.

These examples are simply meant to illustrate the complexities involved in regulating the various worktime practices of groups as varied as employed professionals and farmers. Although rationales for exclu-

sions from all of the hours-of-work provisions prevail, some questions remain.

Exemptions from Specific Worktime Provisions

Although some groups are exempted from all the worktime provisions of the Act, others are exempted from specific provisions, usually under Regulation 285, sections 4, 6, 7, and 8, pertaining, respectively, to maximum hours, overtime pay, public holidays, and paid vacations. (See Phase I Report, Table 4.3). In many cases, it is easy to see a rationale for the exemption of these groups from specific portions of the Act. For example, supervisors and managers usually have substantial individual bargaining power, they do not work by the "time-clock," and they often determine their own worktime; hence, maximum-hours provisions and overtime premiums are difficult to implement and are perhaps unnecessary. It is, however, straightforward for supervisors and managers to receive paid public holidays and vacations, explaining their exemption from maximum-hours and overtime pay provisions but their coverage under public holiday and paid vacation provisions. In other cases, however, questions remain. If construction workers can be covered under the overtime premium, why can't gardening employees? Why are taxi cab drivers not exempt from the maximum-hours requirement but are given a special-industry permit granting them "hours as required," which effectively exempts them from maximum hours? Why are trainees in health courses not given vacations with pay while other trainees do receive such a benefit? Why are firefighters exempt from paid public holidays while ambulance service workers are covered? Why are paid public holidays and vacations given to tobacco harvesters but not to other farm workers? Why are paid public holidays not given to gardening employees? There may be at least partial answers to some of these questions, but there are unlikely to be convincing answers to all of them.

Special Overtime Triggers

Special overtime triggers prevail for groups designated under Regulation 285, sections 16 and 17. The higher overtime triggers for these special groups are: 50 hours (roadbuilding associated with bridges, tunnels, and retaining walls; local cartage; seasonal workers in hotels, motels, restaurants etc., with room and board; seasonal fresh fruit and vegetable processing; sewer and watermain construction); 55 hours (building in relation to streets highways, or parking lots); and 60 hours (highway trucking). The common feature of these groups is that long hours are frequently worked, often because of the seasonal nature of the work or because of being away from home base.

Nevertheless, long hours are common in other jobs for which overtime is paid. As well, the difference between the standard overtime trigger of 44 hours per week and the usual extended trigger of 50 hours is only 6 hours of additional overtime. At a 50 per cent premium this implies an additional 3 hours' pay, or 6 per cent of pay based on a 50-hour week. These are not substantial figures, especially when one considers that the regular rate of pay may grow more slowly over time if overtime premiums are introduced at an earlier trigger.

Other questions arise. In roadbuilding, why should the trigger be different for streets, highways, and parking lots than for bridges, tunnels, and retaining walls? Why should the trigger be 50 hours for seasonal fresh fruit and vegetable processing but not for other seasonal work, such as in the retail trades?

Industry Permits

Through administrative decisions, 26 industries (Phase I Report, Table 4.8) have received special permits from the Director, based on authority granted under sections 18 and 20 (1)(2) of the Act. In addition to the 12 excess hours per week permit granted to (usually) eight designated occupational groups, and the 100-hour per year permit granted to employers for other employees, the industry permits allow the employer to extend the maximum workday from 8 to 10 hours and some allow additional excess hours to other specific categories of employees under section 20 (2). In many ways the special treatment is meaningless because it simply automatically grants to each firm in those industries treatment that likely could be obtained through the normal permit system.

The automatic special treatment does, however, reduce the scrutiny of the Branch, and it puts less pressure on employers to rationalize their need for long hours, relative to a situation in which they have to reapply continually for a permit and involve the union when one is present. Also, since 1944, when most of the special industry permits were granted for the first time, numerous changes in worktime practices have occurred in those industries.

Although the industry permits do not provide much more than what likely could be obtained through the normal permit system, employers in those sectors are concerned about the greater degree of discretion involved in the normal permit system. Being based on the request of an individual employer, the special green permits could be denied, and even 100-hour annual permits could be revoked. In theory, of course, the Director could revoke an industry permit (with notice) since it was granted by administrative authority and not by legislative fiat. In practice, however, it is much more difficult to revoke a right granted to a whole industry than to deny a request to an individual firm.

Special Treatment of Designated Occupations

Under section 20(1)(a) of the Act, the Director is given discretion to grant a permit to a number of designated occupations to work an additional 12 hours per week beyond the usual maximum workweek of 48 hours. The designated occupations are engineer, fireman, full-time maintenance worker, receiver, shipper,

delivery truck driver or helper, watchguard, or any other person engaged in a similar occupation. This special 12-hour per week permit is either granted in conjunction with the 100-hour per year permit, which is issued virtually automatically upon request and is good until revoked; or it is part of the 26 industry permits, which also are good until revoked. In essence, these designated occupations have been granted a quasi-permanent exemption from the maximum-hours provision, extending it basically from 48 to 60 hours per week. The right to refuse overtime, however, still applies at 8 hours per day and 48 hours per week, and the overtime premium applies at 44 hours.

When these exemptions were first instituted, beginning in 1944, the occupations involved were prominent ones in which long hours were common. Over the years, however, changes have occurred. Truck drivers and helpers currently are about to have their hours regulated by highway safety legislation; and for others groups, long hours are not likely to be as typical as they were in 1944.

As well, most of the rationales for regulating hours of work appear to apply as much as to other groups as to these original groups. If long hours jeopardize health and safety, the problem is likely to be the same for certain other groups. If reduced hours can lead to worksharing, the situation is likely to be the same for other groups. And to the extent that a minimal safety net or approved community standard is relevant, it is likely to be relevant to other groups as well.

Special (Green) Permits

Section 20(2) of the Act authorizes the Director to issue special permits where the nature of the work or the perishable nature of raw material being processed requires long hours. These permits, which must be renewed annually, are usually designated for particular occupations where the need arises and, hence, can be thought of as providing special treatment to particular employers for particular groups of their employees.

A key question concerning these permits is whether they would provide sufficient flexibility if some of the previously discussed special treatments were revoked. The matter must also be regarded in the context of the Phase I recommendations to replace the current 100-hour annual permit after 48 hours (effectively allowing an average 50-hour weekly maximum) with an annual block of 250 hours after 40 hours (effectively allowing an average 45-hour weekly maximum). That is, although the maximum hours would be reduced somewhat, more flexibility for occasional overtime would result from the substantial block grant of 250 hours.

Summary of Alternative Procedures for Special Cases

Clearly there exists an array of procedures — some would say a bewildering array — for dealing with the special cases. In many circumstances, the rationale for the special consideration is apparent. In other cases, however, inconsistencies prevail, questions remain as to the need for the special treatment, and the special treatment — much of which originated around 1944 — seems incongruous. In such circumstances, and in light of the broader changes and the streamlining recommended in the Phase I Report, serious consideration should be given to reducing the extent of special treatment. In some cases, this may mean removing the special treatment; in others, it may mean simply making it somewhat less lenient for employers (for example, by reducing the exemption from all the worktime provisions for certain groups, to only some specific exemptions).

Although it is beyond the mandate of the Task Force to make recommendations in every one of the special cases, some general principles should emerge from the four cases under scrutiny —agriculture, domestics, trucking, and construction. In addition, the subsequent discussion of an appropriate review process for handling other special cases, and the discussion of definitions of emergency work, should provide some guidance for dealing with other special cases.

Review Process for Other Special Cases

Given the complexities of the worktime practices for the various groups that are granted exemptions or special treatment under the Act, it would be desirable to have a procedure or structure for dealing with these various special cases. That procedure could involve both a review of the existing exemptions and special treatments, and a mechanism for dealing with new requests for special treatment.

In that vein, the Task Force feels that a small group within the Ministry of Labour could be responsible for this review process. The intention is not to set up a permanent bureaucratic structure but, rather, an ad hoc group that could, as necessary, draw upon the resources of other parties. The review process of the exemptions and special treatment could be conducted approximately every five years in concert with the review of general hours of work issues as stated in Recommendation 22 of the Phase I Report. If possible, it would be desirable to have at least some members of the group participating in subsequent reviews, thereby providing continuity and consistency. The group should prepare a written report on its deliberations and decisions, which would serve as an important document for any subsequent or interim review.

The review process should deal not only with the general question of exemptions and special treatment, but also with a number of specific cases, much as Phase II of the Task Force focusses on agriculture, domestics, trucking, and construction. The specific cases can be based upon the precedence value they may have for other sectors, as well as being areas where problems over worktime practices may be arising. This latter criterion may provide the parties with an incentive to self-regulate in order to maintain their exemption or special treatment.

The review process should focus on the original rationale for the special treatment and whether that ra-

tionale still holds true, given the changed circumstances that have occurred since many of the exemptions and special treatment originated. The onus should be on the parties with special treatment to show cause as to why they are sufficiently different from the general workforce to merit special treatment. The basic principles of worktime standards, as they apply to the general workforce, do not have to be reassessed in each evaluation of the special cases. The special treatment can be assessed in light of the three main rationales for regulating worktime standards: worksharing, health and safety, and the provision of a minimum safety net and acceptable community standards.

The emphasis should be on consistency and uniformity of treatment among similar groups. This perspective may imply a dissimilarity of treatment among dissimilar groups — but, in fact, that is the essence of special treatment, if it is shown to be merited. The emphasis should be on minimizing or eliminating exemptions and special treatment where possible. Such an approach will greatly help to facilitate a streamlining of the legislation and its application, which in turn is desirable if employers are to understand their responsibilities and employees are to understand their rights.

Initial priority should be given to a review of the 26 industry permits, since they are the sectors in which special treatment seems most apparent and in which the changing circumstances call into question the need for special treatment that originated in the 1940s. Some form of public consultation should occur to elicit input from the interested parties. The review group should also keep in mind that a potentially interested third party, which is seldom represented in these deliberations, is the unemployed who could be eligible for work *if* reduced hours lead to worksharing.

In its deliberations, the review group should also keep in mind that even if special treatment is not warranted, consideration should be given to removing it slowly. Whether the special treatment is right or wrong, the parties themselves have built their employment relationship around that special treatment. Some new employers may have entered the industry because they assumed they could utilize certain worktime practices; and some employees may have undertaken a mortgage or other financial commitment based upon an expectation of being able to work long hours. As is the case with general worktime practices, so in the special cases, changes should not be made without considering the consequences to the parties who may have built their expectations around certain legal practices.

Even if a broader social purpose is served by changing the law, there likely will be adverse consequences for some individuals whose earlier actions could not really be construed as intentionally thwarting that broader social purpose. They simply based their actions on the existing law. Disruptions caused by enforcing an existing law are acceptable because the parties should have been obeying the law in the first place. Disruptions caused by changing the law itself, even if they serve a broader social purpose, should be given more consideration.

This point suggests that any removal of exemptions and special treatment be done in a phased basis so as to minimize disruption and allow the parties sufficient time to adapt to the changing circumstances. Obviously, the exact length of an appropriate phasing-in period can be subject to legitimate debate; but a period of three to five years is likely to provide sufficient time to minimize the most severe adjustment consequences. This is especially the case if the precedent becomes established that the trend is toward eliminating or minimizing the special treatment; the parties would thus have an early warning signal of the future climate.

Special Treatment Through the Act, Regulations, or Discretionary Power

The issue of special treatment has another dimension, and that pertains to how the special treatment is given. Basically, there are three possibilities: as part of the Act; as part of the Regulations emanating from the Act; or as part of the discretion of the Director, as that discretionary power is granted under the Act or its Regulations.

Special treatment enshrined as part of the Act itself is the most difficult of the three options to change because such change requires legislative approval. Hence, that option is likely to be the one most sought after by employers.In contrast, regulations do not require a statutory change but, rather, an Order-in-Council. Changes through an Order-in-Council are more administrative in nature and so are easier to make than those requiring a legislative change in the Act itself. Special status under the Act itself, therefore, is likely to be more permanent than that granted under a regulation; hence, employers tend to want their special treatment enshrined in the Act rather than through regulations. The regulations can, however, be broad-reaching, since they can involve "exempting any industry, activity, business, work, trade, occupation, profession, or class of employers or employees from the application of this Act, a part of this Act, or the regulations or any provision thereof" (section 65 of the Act).

The third mechanism for special treatment involves the discretion of the Director, as that discretion is granted under the Act or its regulations. Such discretion is exercised, for example, in the granting of special permits beyond the 100-hour permit or the special-industry permit, or in the approval of compressed workweek schedules. Obviously such discretionary powers have built-in flexibility and, hence, are subject to possible change, more so than a legislative change in the Act or a change in a regulation via an Order-in-Council. They also can be subject to administrative decisions internal to the Employment Standards Branch, such as the recent one to require union input in the granting of a special permit, when un-

ions are present. Because of the nature of discretionary powers, employers tend to prefer any special treatment to be codified as part of a regulation or, better still, as part of the Act itself.

Emergency Situations

Procedures in the Act for exceeding maximum hours in case of urgent work have implications for the issue of special treatment because many of the requests for special treatment arise out of what is believed to be emergency work. Currently, section 19 of the Act allows the maximum hours to be exceeded "in case of an accident or in case of work urgently required to be done to machinery or plant but . . . only so far as may be necessary to avoid serious interference with the ordinary working of the establishment." In such emergency situations, employees do not have the right to refuse the emergency work, and the emergency hours do not count toward hours granted under the permit system; however, the overtime premium must be paid.

Clearly, the definition of accident and urgent work is designed to exclude unexpected or emergency orders, yet judgment calls are needed to define exactly when an emergency occurs. (The analogous situation arises in collective bargaining, and apparently creates a frequently recurring problem in that area.) For example: If a truck driver is in a traffic jam because of an accident to another vehicle, does that constitute an emergency situation? What if the same situation resulted from a tornado? If a subcontractor is called in to do emergency repairs to machinery, is he or she exempt from the maximum-hours provisions? Does a subway suicide constitute an accident? Does a bomb threat? If a printing press broke down, then clearly the repairs will be emergency work; but would the time required to complete the printing job be counted as emergency work if the extra time resulted from the breakdown of the machinery? If a computer is down because of emergency repairs, are persons whose work depends upon the computer allowed to exceed maximum hours?

In all likelihood, over the years, precedents have been set that answer these and other questions. Yet it is unlikely that the parties themselves will be aware of these interpretations. Instances have occurred whereby employers have complained to the Task Force about situations they believed were not covered by the emergency override which, in fact, were covered. As well, apparently there is not full awareness that hours worked under such emergency situations are not debited from the permit hours that have been granted. This allowance may be especially important for groups such as maintenance workers, who may be involved in emergency repairs.

There is also some concern that the emergency override is antiquated, focussing on emergency work to machinery and plant that tends to characterize industrial manufacturing establishments. In today's high-technology world of computers, communications networks, just-on-time delivery systems, and a service economy, "emergency work" may be broader than simply urgent repairs to plant and machinery.

There appears to be a number of options for dealing with the emergency override in the Act. The first is to leave it in its present form, in part because there have been few complaints or problems with the current provision. Broadening the concept of an emergency likely would not reduce the number of disputes over what constitutes an emergency, because choosing that option would simply provide a new margin over which interpretation will be necessary. In fact, the parties have likely developed somewhat of an understanding of what constitutes an emergency in their particular situation, and changing the definition is thereby likely to give rise to more disputes, at least until a new protocol is established.

A second option would be to update the phraseology so that it appears more relevant to modern technology, rather than simply referring to the plant and machinery that characterize industrial manufacturing. Adding the word "equipment" would highlight the applicability to new technology. Eliminating the phrase pertaining to machinery or plant, and rearranging the wording to, for example, "In case of an accident or in case of work urgently required to avoid serious interference with the ordinary working of the establishment," would highlight that the interpretation is meant to be broader than repairs to machinery and plant. Such changes of phrasing, however, may run the risk of the parties giving the override too broad an interpretation — arguing, for example, that not filling the order of an important client could lead to the permanent loss of that client, which would lead to serious interference with the ordinary working of the establishment.

A third option would be to broaden the scope of the legislation by adding a phrase, as exists in the federal jurisdiction, to include "unforeseeable or unpreventable circumstances" as constituting grounds for exceeding maximum hours. Discussions with federal officials indicated that challenges or prosecutions under that portion of the Act do not seem to be an issue. However, this situation must be viewed in light of the unique nature of businesses under federal jurisdiction. If the definition is broadened in this fashion, it should be made clear that the unforeseeable circumstances do not refer to such events as unforeseeable market conditions or unplanned orders.

Whatever option, or blend of options, is chosen, it would be desirable for the Employment Standards Branch to provide greater guidance on the subject of what constitutes an emergency. This could occur, in revised guidelines to the interpretation of the Act. It would also be desirable to remind the parties that such emergency hours are not debited from the allotment of hours granted under the permit system.

SUMMARY

- *In making policy decisions about special treatment for certain groups under the Act, it is important*

not to focus on whether those groups should be covered by the worktime provisions. That issue has been decided in the affirmative for the majority of the workforce. The focus should be on whether the particular groups are sufficiently different from the majority to merit special treatment or exclusion from what is commonly provided.

- *The special treatment should also be evaluated in light of the main rationales for regulating worktime practices: worksharing, health and safety, and the provision of a minimum safety net or acceptable community standards.*
- *In (approximately) descending order of leniency toward employers in terms of regulating their worktime practices, the main options for special treatment are: (1) exemption from all worktime provisions; (2) exemption from specific worktime provisions; (3) a special overtime trigger; (4) industry permits; (5) excess hours for specified categories of employees; and (6) the special discretionary green permits.*
- *From analyzing the current practice with respect to these options, it is clear that there is often some rationale for special treatment; however, there also appear to be inconsistencies, unanswered questions, and antiquated practices.*
- *Given the complexities of the different options for special treatment, as well as differences that often prevail within the workforce under a particular option, the establishing of a process for reviewing the need for each special treatment would be in order.*
- *The process could involve a small review group within the Ministry of Labour that would conduct a review, approximately every five years, focusing on the special cases where problems with worktime practices are most prominent. Emphasis should be placed on the current relevance of the original rationale for special treatment, on consistency, and on minimizing or eliminating exemptions and special treatment where possible.*
- *Although such streamlining is desirable, it should be done in a phased fashion so as to minimize adverse consequences to the parties who have quite legally adapted their worktime practices to the existing law; it is not that these parties were breaking the law in the first place.*
- *Special treatment can be enshrined as part of the Act itself, it can be part of the regulations emanating from the Act, or it can result from administrative discretion of the Director. Of the three possibilities, special treatment as part of the Act is the most difficult to change because it requires a statutory change. Regulations are easier to change because they can be created or ammended by an Order-in-Council. Administrative discretion is the easiest to change since it emanates from the Director. For that reason, special treatment as part of the Act is more sought after by employers, and some concern exists over the uncertainty that could result from administrative discretion.*
- *In emergency situations, currently defined as accidents or urgent repair to machinery or plant, employees do not have the right to refuse overtime; nor are emergency hours debited from hours allotted under the permit system. However, the overtime premium must be paid.*
- *Options for dealing with the current emergency provisions include: leave them as they are on the grounds that they appear to work reasonably well and the parties have certain precedents for interpreting emergencies; update the definition to reflect today's modern technology, which is not based simply on machinery and plant; and broaden the definition to include "unforeseeable or unpreventable circumstances" as is used in the federal jurisdiction.*
- *Whatever option is chosen, debates over interpretation will remain. These debates will focus on the new definition, and, in fact, the number of disputes will likely increase until new precedents on the interpretation of the definition are established.*
- *Whatever option is chosen, the Ministry could provide greater guidance including revised guidelines, on the subject of what constitutes an emergency, and the parties could be reminded that such emergency hours are not debited from the allotment of hours granted under the permit system.*

CHAPTER 3

Agriculture

The treatment of agricultural workers under employment standards legislation in general has always been a controversial issue. This is so in part because it is compounded by other difficult social issues, such as the decline of agriculture and the family farm, the current wave of farm bankruptcies and foreclosures, the role of immigrant and migrant labour, the low-wage position of farm workers in general, and problems of health and safety. In addition to these *general* issues of farming, the issues pertaining to hours of work pose *specific* problems. These are documented subsequently.

In dealing with these general and specific issues, this chapter draws extensively on a background report prepared for the Task force by John Kinley, *Farm Workers and Worktime Provisions of Ontario's Employment Standards Act*. That report, in turn, drew on the results of the recent Ontario Task Force on Health and Safety in Agriculture as well as on recent survey work carried out for the Joint Ontario Agricultural Human Resources Planning Committee.

Nature of Industry

There are six main characteristics that tend to shape the configuration of hours of work in the agricultural industry: diversity; biological and environmental constraints; industry organization; production techniques; costs; and the nature of farm work itself.

Diversity

The great diversity in Ontario agriculture appears not only among the three main types of farming (livestock; field crops, and fruit, vegetables, and horticulture) but also within each of these main categories. In 1981, livestock accounted for approximately 63 per cent of Ontario's farms (mainly cattle and dairy); field crops for 26 per cent (mainly small grains and corn); and fruit, vegetables, and horticulture for 10 per cent. The corresponding percentages for the values of sales are similar to those for the number of farms.

Obviously there is considerable diversity in the production processes involved in the different types of agriculture, and such diversity has implications for the utilization of labour, including the hours that are to be worked and the times they are to be worked in the day, week, or year. This highlights the fact that although the whole industry could be affected dramatically by regulations on hours of work, the incidence of that effect would vary substantially within the industry.

Biological and Environmental Factors

The work-scheduling practices of many sectors of agriculture are heavily influenced by biological requirements. Cows have to be milked with a certain frequency and at certain times of the day, and grains and fruits and vegetables have to be planted and harvested at particular times. In many cases, there is a regularity to the practice even though it may require long hours and continuous availability. In other cases, the events are unpredictable, as with disease in crops or livestock, or they are dependent upon the weather or season. Weather conditions are particularly important in more northern regions of the world, including Ontario, given the short growing season and the variability of weather within that season.

In some ways, these situations have parallels in other industries, including peak-load and seasonal demands, needs for split shifts, and emergency work requirements. Nevertheless, it is unlikely that any other industry faces these constraints to such a degree as agriculture, creating considerable pressure for gearing the working hours to the requirements of the job.

Industry Organization

As Table 3.1 illustrates, the vast majority of farms in Ontario are still individual proprietorships or, to a lesser extent, partnerships. Together these two types of farms comprise 96 per cent of all farms and almost 80 per cent of farm sales. Conversely, 3 per cent of all farms are family corporations, controlling 17 per cent of sales, and less than one per cent are other corporations, controlling 4 per cent of sales. Although the corporate farms are much more likely to employ hired labour (column 3), almost two-thirds of the hired labour is still employed by individual proprietorships or partnerships (column 5), reflecting their dominance of the market. On average, 41 per cent of all farms use hired labour, with the proportion being twice that for corporate farms (column 3). On average, those farms that utilize hired labour employ the equivalent of about one full-time employee per year,

Table 3.1
Hired Farm Employment by Type of Farm Organization, Ontario, 1980

Type of Farm Organization	Total Number of Farms	% of Sales	% Employing Hired Labour	Employees (Full-time *Equivalent*) Number	%	Average Employees per Farm That Hires[a]
	(1)	(2)	(3)	(4)	(5)	(6)
Individual	68,410	60.0	37.4	15,511	46.9	0.61
Partnership[b]	10,810	19.1	54.6	6,061	18.3	1.03
Family Corporation	2,690	16.6	79.7	8,723	26.4	4.07
Other Corporation	428	4.1	81.3	2,508	7.6	7.21
Other Forms	100	0.1	70.0	297	0.8	4.24
All Farms	82,448	100.0	41.3	33,100	100.0	0.97

[a] Number of full-time equivalent employees divided by the number of farms that hire such employees.
[b] Includes both verbal and written partnerships, of roughly equal numbers.
Source: Adapted from Kinley (1987, Tables 2 and 3). The original data source is Statistics Canada, Census of Agriculture, 1981.

although the family corporate farms average about four such employees and the other corporate farms average seven employees (column 6). Averaged over all farms, of course, these figures would be smaller (less than half in total) because many farms do not use any hired labour.

The figures of Table 3.1 illustrate that the "family farm" structure is still by far the dominant form of farm organization in Ontario today and that although some of these farms are incorporated, they still do not employ large numbers of employees. Even the non-family farm corporations, which control only 4 per cent of sales and hire less than 8 per cent of the employees, essentially are small businesses, averaging about seven full-time equivalent employees per year. Although there certainly are exceptions, farming in Ontario today is still typically characterized as small business and family run. In that vein, the application of employment standards will face the issues that are peculiar not only to agriculture (for example, biological and environmental factors) but also to small business (for example, enforcement problems, usually low profit margins, a personalized relationship with employees, and informal employment practices). The smallness also creates indivisibilities in the use of labour. For example, if 10 or 12 person-hours of hired help are required each day, it is often not feasible to run two shifts with two persons.

Production Techniques

Both in the family farm and in the larger farm corporation, dramatic changes have been occurring in farming production techniques. Such changes have included mechanization, automation, scientific practices, and the increased use of chemicals and pesticides. These changes have reduced the overall labour requirements and the physical demands of many tasks, and have led to increased specialization and the use of subcontracting. They have also exposed workers to the potential adverse health effects of toxic substances at the workplace.

The impact of changing farm technology on hours of work is not clear. In some cases, it can reduce the need for long hours because many of the functions may involve maintenance and monitoring. Even when expensive equipment is involved, two shifts theoretically are possible, although they do not seem to be common practice. In other cases, longer hours may be involved to utilize fully the expensive capital equipment, or because specialization leads to peak demands for a specialized task, or because long periods of monitoring are required.

Although the overall effect of such production changes on hours of work is of an indeterminate nature, these changes likely have increased the need for flexibility of worktime arrangements and for the availability of workers should certain key tasks have to be performed. The issue of long hours also has important implications for the exposure of farm workers to toxic substances, although the relationship between exposure time and health hazards is likely sufficiently complex to be better handled by health and safety legislation than by hours-of-work legislation. The latter could set daily or weekly maximum hours; however, that may do little to reduce the effect of exposure to toxic substances, if such effects are most serious from the cumulation of exposure on a yearly or lifetime basis.

Costs

As might be expected in a declining industry dominated by small businesses, cost considerations affecting profit margins are paramount in the minds of most farmers. The concern is particularly acute in times of substantial farm bankruptcies and foreclosures. Thus there is the fear that any cost increases emanating from restrictions on hours of work or requirements to pay overtime would lead to farm closures that would exacerbate unemployment rather than leading to job creation.

It is difficult to judge the financial capabilities of farms that may be cash poor but wealthy in land and equipment, especially when the assets are controlled on a family basis. Undoubtedly, many farms cannot afford any cost increases that could emanate from regulations on hours of work or overtime; and even if they could, it is not clear that regulating hours of work would be the best mechanism for improving the position of farm workers. Undoubtedly, other farms could easily afford the cost increases, especially if only minor reorganization is required to even out the worktime practices or to hire additional labour to meet peak demands.

It is also difficult to determine how important such cost considerations should be in designing employment standards legislation. Many people would argue that such organizations should not be in business if their existence requires exploiting workers through excessive hours or not paying overtime premiums. Others would argue that some job is better than no job and that the nature of farmwork makes it particularly difficult to judge if farm workers are exploited, especially given the availability of nonfarm employment.

Nature of Farmwork

The nature of farmwork itself has important implications for regulating hours of work and overtime. The work is often arduous, especially during certain periods. Such periods, however, frequently alternate with periods of reduced activity. Much of the work for hired labour is unskilled or involves tasks that can be quickly learned, although the permanent hired hand is likely to have to be a jack-of-all trades with a significant amount of training in a variety of tasks. Multiple-job holding is common with many hired farm workers having other jobs, especially during the off-season, and with many farm owners themselves having other jobs, including full-time ones. Work and compensation arrangements are often informal, with hired hands, especially on family farms, frequently given housing on the farm and treated as family members.

Such arrangements are likely to make it difficult to enforce compliance with employment standards legislation in general and hours-of-work regulations in particular. In addition, they call into question the meaning of hours-of-work limits when multiple-job holding is common and when being available may be as important as being on the job.

Nature and Size of Workforce

Given the informal work arrangements and the diversity of farm organizations, it can be difficult to establish precisely the number of paid farm workers in Ontario, especially those who would be affected by the removal from the legislation of exemptions for farm workers.

Size of Paid Hired Workforce

As indicated in Table 3.1, according to census data there were 33,100 full-time-equivalent paid employees in agriculture in Ontario in 1980. This number of full-time equivalents will substantially understate the number of employees who actually will work on farms at some time during the year, since a larger number of casual and part-time workers will be required to constitute that number of full-time equivalents.

According to the Labour Force Survey figures, which would include part-time workers, there were approximately 53,000 hired paid workers in agriculture in Ontario in 1980 and 51,000 by 1986. This roughly corresponds to the estimate provided by the Employment Standards Branch, of 54,000 paid workers in agriculture who in 1986 were exempt from the hours-of-work and overtime provisions of Ontario's Employment Standards Act (Phase I Report, Table 4.6). Thus, it appears that approximately 54,000 full-time and part-time workers could be affected by changes in Ontario's Employment Standards Act to include agricultural workers in its coverage. Since, however, the hours-of-work and overtime provisions would be most applicable to full-time workers, then an estimate of 30,000 full-time equivalent workers may be a more accurate reflection of the potential numbers who could be affected by those changes.

The Labour Force Survey data also indicate that the 51,000 hired workers constituted 40 per cent of the total agricultural workforce in Ontario in 1985. Farmers and owners constituted 49 per cent of the workforce, and unpaid family members constituted the remaining 11 per cent. The trend over the past 10 years has been toward more hired workers and fewer unpaid family members. Thus, while the hired workforce in farming is still outnumbered by the equivalent of the "self-employed," the trend is in the direction of more persons involved in an employment relationship, albeit one characterized as informal and dominated by small businesses.

Domestic and Off-shore Migrant Labour

The previously discussed estimates of hired farm labour in Ontario do not include the approximately 5,000 off-shore workers (mainly from the Caribbean and Mexico) or 4,000 migrant workers from other parts of Canada (mainly from Quebec and the Atlantic Provinces) who worked as nonresidents in Ontario in 1986. This domestic migrant workforce is recruited by the Canada Farm Labour Pools, in conjunction with the Canada Employment Centres, to fill many

of the seasonal jobs that cannot be filled by local labour. Although there are no formal agreements between the farm employers and the migrant recruits, rates of pay are offered and accepted through the Pools. Arrangements for off-shore migrants are made through the Federal Department of Employment and Immigration and entail agreements specifying wages and hours of work.

This use of nonresident labour has a number of implications for employment standards in general and hours-of-work provisions in particular. First, because most nonresident workers have come to the province specifically to earn as high an income as possible over the short season they are here, they require long hours given the low wages. In addition to wanting the long hours to maximize their income, most also find that their nonwork time is less valuable to them here without the social networks of the country or province (to which they will return). Second, the particular work arrangements under which they are recruited could specify maximum hours restrictions or overtime premiums. The off-shore migrant has no opportunity for mobility away from an employer who does not provide a reasonable package of wages and hours unless previously arranged. On the other hand, the domestic migrant may move almost at will. Third, the whole issue of what is essentially a "guest worker" program raises a number of thorny questions. Such workers obviously are better off than they would be in their home country or region, given the popularity of the program. Nevertheless, they are filling jobs that local workers will not do for the wages, given the working conditions and hours of work. These points raise the question of how we want to treat such workers, especially given their relatively disadvantaged positions.

Characteristics of Workforce

The previous discussion suggested a description of hired farm labour that is quite diverse. Some are quite permanently disadvantaged workers with few skills and few options elsewhere. Others regard farmwork as a temporary job until an industrial job becomes available, and others may alternate between farm and industrial jobs or even do both. Farmwork may provide temporary or part-time work for housewives and students. Peak seasonal demands, especially for the less desirable jobs, also are often filled by immigrants or migrants brought in from other provinces. There is also a small cadre of more permanent hired hands, many of whom often live on the farm on a reasonably permanent basis. Whatever their individual characteristics, they tend to share the common trait of receiving low pay.

Not surprisingly, such a diverse workforce is likely to have different needs and aspirations with respect to hours of work and is also likely to have different degrees of bargaining power and options elsewhere. This diversity obviously complicates the problem of designing worktime standards that tend to be uniformly applied.

Exclusions from Employment Standards

Current Ontario Situations

Currently, workers in agriculture in Ontario are exempt from all or most of the worktime provisions of the Employment Standards Act. As indicated in Table 3.2, these exemptions occur in three parts of the Act, exempting different farm groups from different worktime provisions of the Act.

Evolution of Exemptions

The current exemptions of farm workers in Ontario have evolved from situations that have both broadened and narrowed the scope of the farm worker exemption. The original legislation, beginning with the Factories Act of 1884 (which established maximum hours of 10 per day and 60 per week for women and youths), applied only to factories and, hence, did not involve farms. The Hours of Work and Vacations with Pay Act of 1944 changed the maximum hours to 8 per day and 48 per week and introduced the requirement of one week of annual paid vacation after one year of employment. In 1945, persons "employed in farming operations" were exempt, along with numerous other groups. In 1950, this exemption was broadened to include persons "employed in the culture of flowers, fruits and vegetables." In these early years the definition of farming was broadly construed so that the farm workers' exemption was widespread.

In 1968, the current Employment Standards Act was established, introducing the overtime premium, and in 1974 paid public holidays were introduced, thus establishing the current components of worktime provisions — maximum hours, overtime premium, paid vacations and paid public holidays. Between 1968 and 1974, there was extensive discussion among the agriculture industry, the Ministry of Agriculture and Food, and the Ministry of Labour over the precise definition of agricultural activities and the appropriate exemptions for the different groups. As well, there were a number of test cases through referees and the courts. The result was the current set of definitions and exemptions, outlined in Table 3.2. All areas of farming were exempt from the hours, overtime, and public holidays insert table 2standards, but vacations with pay were required in a number of "near-farming" activities, such as egg grading, greenhouse and nursery operations, and mushroom growing. Since they have been established, there have been few challenges to Branch rulings on agricultural issues.

Rationales for Exemptions

The rationales for the farm worker exemptions relate to the previously discussed characteristics that affect the hours of work in that industry. Central to the rationale for the exemptions were variability of the weather, perishability of the product, difficulty of recording hours, and cost considerations. There is a recognition, however, that these characteristics did not apply to all farm organizations and types of farming, and that changing farming practices may make some

Table 3.2

Farm Worker Exemptions from Various Worktime Provisions of Ontario's Employment Standards Act, 1987

Type of Farm Worker Exempt (Under Specified Section of Act)	Part IV Maximum Hours	Part VI Overtime Premium	Part VII Public Holidays	Part VIII Vacation with Pay
1. *Regulation 285 s. 3:* farm workers whose employment is directly related to production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, and poultry	exempt	exempt	exempt	exempt
2. *Regulation 285 s. 4, 6, 7:* landscape gardening; growing of mushrooms, flowers, trees and shrubs; growing, transportation and laying of sod; breeding and boarding of horses; keeping of fur-bearing animals	exempt	exempt	exempt	covered
3. *Regulation 284 s. 4, 6, 7:* and *Regulation 285, s. 4.* fruit, vegetable and tobacco harvesters employed for 13 weeks or more	exempt	exempt	covered	covered

Source: Ontario Employment Standards Act.

of the original rationales outdated and inappropriate.

Practices in Other Jurisdiction

Other Provinces

Table 3.3 illustrates the various exemptions from worktime employment standards for farm workers across the provinces in Canada (the federal jurisdiction not having farm workers to cover). Although the difference across jurisdictions in the definition of farm workers complicates precise comparisons, the entries of Table 3.3 provide a general picture. (See Kinley [1987, Table 9] for more detail.)

None of the jurisdictions has any effective regulation of the maximum hours of farm workers. Most provinces have no regulations of maximum hours for any workers, and those having effective maximum (Alberta and Ontario) exempt most farm workers (Newfoundland does not really have an effective maximum, being set at 16 hours per day.) Similarly, all jurisdictions exempt farm workers from their overtime premiums, although Saskatchewan requires such premiums for farm workers who work in hatcheries, greenhouses, nurseries, or bush clearing, and Newfoundland requires premiums for farmers who work in greenhouses or nurseries and who care for livestock — situations that often are close to factory production. New Brunswick exempts only family farms that employ three or fewer hired hands, a conscious policy to encourage family farming and to put larger "commercial" farms on par with other enterprises. This legislation has been in place for about two years, and no serious administrative problems appear to have arisen.

There is greater variation with respect to the requirement for paid public holidays. Most jurisdictions exempt most farm workers, although, British Columbia and Newfoundland require such holidays for most of their farm workers, and Saskatchewan, Ontario, Quebec and New Brunswick exempt some specific groups. There is no uniformity in those groups for which paid public holidays are required: in Saskatchewan it is required for employees of hatcheries, greenhouses, nurseries, and bush clearing; in Ontario it is for fruit, vegetable, and tobacco harvesters employed for 13 weeks or more; and in Quebec and New Brunswick it is required of farms of more than three employees.

The jurisdictional requirements for paid vacations tend to be similar to those for paid public holidays. However, slightly broader coverage for paid vacations than paid public holidays is mandated in British Columbia and Ontario.

In essence, there appears to be a consensus that specifying maximum hours is not feasible in agriculture. Overtime premiums are seldom required, except for specific groups whose employment in agriculture tends to resemble industrial employment. There is a precedent, however, for overtime premiums for all employees in larger farms (in New Brunswick) suggesting that that is a feasible policy option. Similarly, although most jurisdictions do not require paid public holidays or vacations for farm workers, some do for almost all farm workers, and many do for some specific groups of farm workers. When the practice of requiring overtime or paid public holidays or vacations is required, it is usually for farm workers whose employment most closely resembles that of industrial workers, who also receive such benefits.

In the spectrum of worktime employment standards for agricultural workers, Ontario seems to be fairly

Table 3.3
Exemptions from Worktime Employment Standards, Hired Farm Workers, Canadian Provinces, 1987

Province	Maximum Hours[a]	Overtime Premium	Public Holiday	Vacation with Pay
British Columbia	None	Exempt	Covered[b]	Covered
Alberta	Exempt	Exempt	Exempt	Exempt
Saskatchewan	None	Exempt[c]	Exempt[c]	Exempt[c]
Manitoba	None	Exempt	Exempt	Exempt
Ontario	Exempt	Exempt	Exempt[d]	Exempt[e]
Quebec	None	Exempt	Covered[f]	Covered[f]
New Brunswick	None	Covered[f]	Covered[f]	Covered[f]
Prince Edward Island	None	Exempt	None	Exempt
Nova Scotia	None	Exempt	Exempt	Exempt
Newfoundland	Covered[g]	Exempt[h]	Covered	Covered[i]

[a] The entry "none" implies that there is no maximum-hours provision for any industry, including agriculture; the entry "exempt" implies that there is a maximum-hours provision for most industries, but agriculture is exempt.
[b] Except for workers employed to harvest fruit and berry crops.
[c] Except for workers employed in hatcheries, greenhouses, nurseries, and bush clearing.
[d] Except for fruit, vegetable, and tobacco harvesters employed for 13 weeks or more.
[e] Except for persons in d above, as well as persons engaged in: landscape gardening; growing of mushrooms, flowers, trees and shrubs; growing, transportation and laying of sod; breeding and boarding of horses; keeping of fur-bearing animals.
[f] Exempt if 3 or fewer hired employees other than relatives.
[g] But the maximum is 16 hours per day.
[h] Except for workers employed in nurseries, the care of livestock, or the production of fruits and vegetables in greenhouses.
[i] If employed for 5 consecutive days or more.

Source: Kinley (1987, Table 9).

typical of other jurisdictions, exempting most, but not all, agricultural workers from most, but not all, worktime standards. Perhaps the main distinction is that it is one of the few jurisdictions with maximum-hours requirements for any workers, and, hence, it has had to make a conscious decision to exempt agricultural workers from that standard.

United States

In the United States, most workers are covered under the federal Fair Labor Standards Act of 1938, which specifies a time-and-one-half overtime premium after 40 hours per week with no maximum-hours limits. Agricultural employees are exempt. State legislation can take precedence over federal legislation, if the former is more generous to employees. However, no states have taken this initiative on maximum hours or overtime pay for farm workers, although some have done so in other areas. In essence the United States has no regulations on hours of work and overtime for its farm workers. This situation has led many Ontario farmers to be concerned that additional regulations in Ontario would make them even less competitive than they now are with U.S. farmers.

Europe

In contrast to the nonregulated environment for farm workers in the United States, in Europe the terms and conditions of employment, including hours of work and overtime, are extensively regulated for many farm employees. Such regulation is often carried out through the process of collective bargaining, as well as through labour standards legislation.

For example, in England and Wales the farm workers union bargains nationally with farm representatives, and, when they fail to agree, the independent members of the bargaining committee arbitrate a settlement. Currently, time-and-one-half is required after 40 hours, with higher rates for such items as unscheduled Sunday work. Paid vacations and holiday entitlements are also established.

In France, agricultural workers have the same status as other workers under the labour standards legislation, which specifies maximum hours and overtime premiums (time-and-one-quarter after 39 hours and time-and-one-half after 48). Five weeks' paid vacation is required, with prorating for part-time workers. One statutory paid holiday is required.

In the Federal Republic of Germany, farm workers are exempt from the current worktime legislation. However, agriculture would be covered under the new legislation that is being proposed. As well, worktime practices would be established by collective bargaining between the Agricultural Workers Union and a farm employee association.

In Sweden, farm workers are covered along with other employees under the Working Hours Act of 1983, which specifies a 40-hour workweek but allows up to 8 hours of weekly overtime to a maximum of 200 annual overtime hours. Also required are 36 consecutive hours of free time in every 7 days. Within these constraints, the actual scheduling of hours and overtime premiums is established by centralized collective agreements, including ones in agriculture. In addition, 5 weeks of paid vacation are required per year.

At the level of the European Economic Community, there is currently no legislation on worktime practices. Recent proposals, however, have specified a 40-hour week of 5 days in crop production, while allowing more days in livestock farming. An overtime premium would be required beyond those hours, and paid holidays and vacations would also be required. Major members of the European Economic Community have already adopted, or are moving toward, such recommended standards.

Clearly, the European situation involves much more regulation of worktime practices than exists in Canada and especially in the United States. It illustrates that "anything is possible" in this area, including maximum hours and an overtime premium, and the inclusion of agricultural workers under general worktime legislation. Decisions on exempting agricultural workers can be based on practical considerations that weigh the pros and cons of the exclusions, not on theoretical principles that automatically preclude covering agricultural workers.

Hours and Overtime

Extent of Long Hours

As indicated in Table 3.4, agriculture has the longest average workweek of all industries in Ontario, averaging 41.6 hours compared with an all-industry average of 36.9 hours. It also has the highest unemployment rate. The differences in hours worked are more dramatically highlighted in comparisons of the workforce working over 40, 44, and 48 hours since, unlike the average weekly hours figure, these numbers do not reflect the high proportion of part-time workers. For example, in agriculture, almost one-third of the paid workforce averages over 48 hours per week, a proportion three times the average for this category, and almost twice that of the next leading industry, construction, in terms of long hours. Similarly, slightly over 40 per cent of the paid workforce in agriculture averages more than 40 and 44 hours and, hence, would be affected by any decision, for example, to require overtime premiums after such hours.

Although not shown in the table, the average weekly hours of the full-time paid workforce also dramatically highlights the long hours in agriculture relative to other industries. For such full-time paid workers, the average in agriculture is highest, at 48.6 hours, compared with the next highest, construction, at 41.7 hours, and an all-industry average of 38.4 hours.

Although agricultural workers work more hours than any other industry, they do not constitute a large portion of all long hours worked, but that is because they simply do not constitute a large portion of the workforce. As illustrated in the Phase I Report of the Task Force (Table 2.3), agriculture accounted for only

Table 3.4
Per Cent Working Long Hours in Agriculture and Other Industries, Ontario, 1985

Industry	Per Cent of Workforce Averaging Over 40 Hours	Over 44 Hours	Over 48 Hours	Average Weekly Hours	Unemployment Rate
Agriculture	41.8	41.8	32.5	41.6	19.1
Other primary	–	–	–	41.3	9.4
Manufacturing	25.3	19.0	9.9	39.9	7.3
Construction	31.7	26.7	18.7	39.9	16.3
Transportation, communications, utilities	26.1	16.6	13.9	39.4	5.5
Trade	22.0	16.6	10.7	34.5	7.2
Finance	21.6	17.8	12.7	37.7	5.0
Service	19.5	16.2	11.3	34.2	8.0
Public administration	15.7	10.2	5.8	36.7	5.9
All industries	22.6	17.8	11.4	36.9	7.8

Source: Ontario Task Force on Hours of Work and Overtime, Report, Phase I (1987, Table 2.2). The original data source was unpublished data from Statistics Canada's Labour Force Survey.

3.9 per cent of the workforce working over 48 hours, compared with the service sector, which accounted for 29.4 per cent of such long hours. This small proportion of all long hours accounted for by agricultural workers directly results from the fact that they constitute only 1.5 per cent of all hours worked. Thus, although restrictions on long hours would affect a substantial proportion of agricultural workers (more so than in any other industry), they would not affect a substantial portion of the total workforce.

Extent of Overtime Pay

Although long hours are common in agriculture, these hours are rarely paid at an overtime premium. Data do not exist to document formally the extent of overtime pay in agriculture, but Kinley (1987) documented that overtime premiums did not exist in any of the situations he analyzed. That reflects the fact that agricultural employers are exempt from such practices under the Employment Standards Act and agricultural workers are seldom members of a union, where such practices would be common. Nevertheless, overtime premium pay could be utilized as a compensation device even though not required by law or collective agreements. In fact, it could be used by employers to get workers to accept voluntarily the long hours, given the associated high premium. That this is not common practice (or at least not documented as such) suggests that the long hours are simply regarded as part-and-parcel of agricultural employment, that the employees feel they have few alternatives, or that the employers simply require the long hours and cannot rely on an overtime premium to attract those hours voluntarily.

Whatever the reason, the lack of overtime premiums in private employment relations in agriculture does suggest that their being imposed by legislative fiat would imply a substantial intrusion on present private practices. In other words, the legislation would not simply be affecting a small number of employers who do not follow a standard industry practice; rather, it would affect almost all employers in agriculture.

Extent of Paid Public Holidays and Paid Vacations

Although most farm workers are exempt from all hours-of-work, overtime, public holiday, and vacation-with-pay provisions of the Employment Standards Act, fruit, vegetable, and tobacco harvesters who have been with the employer for 13 weeks or more are not exempt from the public holiday or vacation-with-pay provisions. In spite of the fact that paid vacations and holidays are often not required by law, Kinley (1987) documents that they are common practice in many situations of agricultural employment. This "voluntary" arrangement probably reflects the fact that paid vacations and holidays are likely to be less disruptive to farmers than is having to pay for overtime hours. Paid vacations and holidays involve an amount that is known in advance, and vacations usually can be taken in slack periods. In contrast, overtime expenses would be less predictable, and, where they are predictable, as in peak seasons, they may be regarded as a regular feature of the job. In addition, overtime premiums would involve the task of

establishing the standard workweek or workday after which the premiums are paid.

The statement that overtime premiums are not common in agriculture has to be qualified by the fact that it may be difficult to document informal practices in such an employment relationship. For example, in some situations the equivalent of overtime may be given if workers are granted extra time-off after a period of long hours or even if there is an implicit understanding that one "takes it easy" after such a period. Informal arrangements are common in small business and are likely to be even more common in agriculture, given the variability in peak demands.

Attitudes to Long Hours

Employer Attitudes

As implied by the previous discussion, employers feel that the long hours of agricultural work are a natural and necessary ingredient of that type of work. Although the hours are long, they tend to be long for brief periods of time for seasonal and part-time workers or interspersed with periods of slow activity for the full-year, full-time workers. As well, when long hours are involved on a more permanent basis, the tasks are usually varied, not requiring the pace and stress of assembly line and industrial tasks. Furthermore, farm workers typically do not have the long commute time that characterizes urban work. Farm employers themselves also typically put in the long hours they ask of their employees (albeit this is likely to be a more rewarding task when it builds up equity in the farm).

Many farm owners recognize that the long hours are negative factors in their recruiting and retaining a workforce. Nevertheless, they feel that their peak demands for hours often coincide with seasonal and part-time availability of many workers. As well, some efforts are made to smooth out the peak demands and to engage in crop diversification to provide more continuous year-round employment. Nevertheless, this is not always possible, given the biological and environmental constraints of the industry.

It is clear that employers would regard maximum-hours limits as particularly injurious to their industry, especially if exemptions or averaging provisions were not allowed. Overtime premiums would be more tolerable since they would at least allow employers to utilize long hours in peak periods; however, cost considerations make this alternative universally unattractive. Most employers feel that they cannot not afford such premiums, and if they reduced their hours because of the premiums (or maximum limits), they would not be able to provide sufficient income to attract farm workers.

Attitudes of Farm Workers

A survey conducted by the Joint Ontario Agricultural Human Resources Planning Committee provides some information on employee attitudes to working hours in agriculture. The questions were designed to ascertain the reasons for the high turnover of seasonal domestic farm workers, one-third of whom quit their job before it was finished. In response to the question of suggesting the two main ways of improving harvest work, 82 per cent selected increased wages, 39 per cent suggested better working conditions, and 22 per cent suggested shorter hours. In terms of factors ranked as most important when working on a farm, reasonable treatment by the farmer was ranked above wages, with "hours of work" ranking fifth, behind "working conditions" and "safety", which ranked third and fourth. In essence, shorter hours is an issue but not a top priority for domestic farm labour. This issue is likely to be even less important for immigrant and migrant farm labour, given their desire to maximize their income for the short period they are in the province.

Pros and Cons of Regulating hours

The previously discussed characteristics of agriculture highlight the problems of regulating hours of work in that industry. Long hours, especially at peak times, are an integral component of that industry, a fact recognized by the workforce. It is likely that regulating long hours and, especially, imposing maximums, would be more disruptive to that industry than to any other, given the usually small profit margins. Furthermore, enforcement would be difficult, given the informal work arrangements and the fact that both employers and employees often want the long hours.

Nevertheless, there are some sectors where regulations, including maximum hours, would be feasible, especially because those sectors resemble industrial operations. In addition, overtime premiums are feasible in almost any employment relationship and are more easily enforced than maximum hours because, with overtime premiums, employees have an incentive to ensure compliance. The same is the case with paid statutory holidays and paid vacations.

As with the nonagricultural workforce, it is difficult to determine the job-creation potential of policies like overtime premiums. That potential depends upon the extent to which overtime premiums would decrease the use of overtime hours of existing employees and the extent to which such a reduction in overtime hours would lead to new hiring. As with nonagricultural employees, the job-creation potential likely would be small. Still there could be some potential, which may be very important given the high unemployment in agriculture. For example, rather than pay an overtime premium some farmers may hire an additional part-time employee or subcontract a particular job (which could create jobs elsewhere), or they could even run a double-shift operation during peak periods. Obviously, the incidence of such a policy change would fall disproportionately on those larger farm operations that tend to use more hired labour.

Health and safety objectives could also be attained by regulating long hours in agriculture. However, as discussed previously, the complexities of the relationship between hours of work and health and safety (es-

pecially when exposure to toxic substances is involved) make this an area that is likely to be better handled through legislation on health and safety than hours of work.

The most probable rationale for hours-of-work regulations in agriculture pertains to the establishment of the minimal safety net and normal community standards that usually apply to the other members of the workforce, many of whom are already more advantaged than agricultural workers. Therefore, the relevant question should be; "Should agricultural workers be treated differently from most other workers, who do receive the protection of the Employment Standards Act for their worktime practice?" This question narrows the range of the debate considerably because it downplays many of the basic questions pertaining to the application of such principles to the workforce in general, and it focusses the debate on the *differences* between agricultural workers and other workers.

Certainly there are differences, and these have been highlighted. The pressing question here is: "Are these differences sufficient to merit most agricultural workers being excluded from most of the worktime provisions of the Act?" The community standard appears to be to treat agricultural workers differently from other workers.

Nevertheless, there is ample evidence in Europe and in some Canadian jurisdictions that agricultural workers can be treated like other workers with respect to most if not all worktime practices. The decision rests on a judicious weighing of the pros and cons, not on *a priori* reasoning that automatically sets agricultural workers apart.

SUMMARY

- *The treatment of agricultural workers under employment standards legislation is controversial because it is compounded by other social issues, such as the decline of agriculture and the family farm, the increase in farm bankruptcies, the role of immigrant and migrant labour, the low-wage position of agricultural workers, and problems of health and safety.*
- *In addition, the regulation of* worktime *practices is further complicated by a number of special characteristics of agriculture: diversity across different types of farms, especially with respect to worktime needs; biological and environmental constraints, especially emanating from seasons, weather, and diseases; the organization of the industry, especially the continued dominance of small, family farms; production techniques that have changed dramatically in recent years; cost concerns, given the usual small profit margins; and the nature of farmwork itself, especially with respect to requirements of skill, physical demands, and availability.*
- *Although agro-business is becoming more prominent in farming, farming in Ontario is still dominated by the small family farm. Individual-owned farms or partnerships control 80 per cent of sales and hire two-thirds of all farm labour, averaging less than one employee per farm. Even the non-family corporate farms, which control only 4 per cent of sales, average only 7 employees per farm.*
- *There are approximately 50,000 paid agricultural workers in Ontario, amounting to about 33,000 full-time-equivalent paid employees, constituting about 40 per cent of the total agricultural workforce. Approximately 5,000 of these workers are immigrants, mainly from the Caribbean and Mexico, and 4,000 are migrants, mainly from Quebec and the Atlantic Provinces.*
- *Such farm workers are excluded from the maximum-hours and overtime provisions of the Ontario Employment Standards Act, and the majority are excluded from the provision requiring paid public holidays (except for fruit, vegetable, and tobacco harvesters employed for 13 weeks or more) and paid vacations (except for the harvesters and those engaged in gardening and the care of horses and fur-bearing animals).*
- *These exemptions evolved from a dialogue between the relevant ministries (labour and agriculture) and farmer representatives, as well as from a number of precedents on interpreting the legislation.*
- *The exemption of all or most agricultural workers from all or most of the worktime employment standards is common practice in other Canadian jurisdictions and in the United States. However, in some Canadian jurisdictions there is precedence for requiring overtime premiums for certain groups whose employment more closely resembles that of nonagricultural workers, and there is even broader precedence for paid public holidays and vacations.*
- *In Europe, where the regulation of worktime practices is more extensive than in North America, agricultural workers are typically covered by the legislation. They are also often covered by centralized collective bargaining.*
- *Because of the nature of the industry and their being excluded from the worktime provisions of employment standards, employees work longer hours in agriculture than any other industry. However, because agricultural workers comprise a smaller proportion of the total workforce, they constitute a much small proportion of all long hours worked than do members of the large manufacturing and service sectors.*
- *Although overtime premiums would still be possible even though they are not required by law, they are not common practice in agriculture. Paid holidays and vacations are more common and may be more acceptable because they involve predictable expenses, and vacations can be taken in the slow season. Also, they do not require the establishing and calculating of standard hours after which an overtime premium must be paid.*
- *Farm employers regard long hours as a natural and necessary component of agricultural work. They*

regard maximum-hours limits as very difficult, if not impossible, to adapt to, followed by overtime premiums, and then paid vacations and holidays.

- *Farm employees also regard long hours as a natural component of agricultural work and often regard it as necessary to enable them to earn a sufficient income, given the short season. They attach more importance to being reasonably treated and receiving a decent wage than to having reduced hours.*
- *For the above reasons, it is clear that regulating long hours and, especially, establishing maximums, would be difficult in agriculture.*
- *Nevertheless, there are some sectors, which resemble industrial employment, where such regulations, in any form, would be as feasible as in the industrial counterparts.*
- *The rationale for restricting hours of work in agriculture to create new jobs is likely to be slim, although unemployment is higher in agriculture than any other industry.*
- *Similarly, the health and safety rationale is likely to be better handled through legislation on health and safety than on hours of work.*
- *The main rationale for regulating such hours would be to provide agricultural workers with the same safety net and community standards provided to other workers, whatever the pros and cons of those standards.*
- *Thus, the relevant issue is whether agricultural work is sufficiently* different *from other work to merit the agricultural exclusion from most worktime regulations.*
- *Most North American jurisdictions exclude agricultural workers from most worktime regulations; hence, changes in Ontario would be contrary to that pattern. There are, however, precedents in other Canadian jurisdictions for overtime premiums and, more commonly, for paid vacations and holidays. European precedents exist for treating agricultural workers like other workers with respect to all worktime practices, including maximum hours.*
- *The policy decision, therefore, rests on a judicious assessment of the pros and cons of exempting agricultural workers, which in turn rests on whether their situation is sufficiently* different *from that of other workers to merit exclusion.*

CHAPTER 4

Domestics

The treatment of domestic workers under employment standards in general has long been a controversial issue. This is so, in part, because it is compounded by other controversial issues; among them, the position of women in the labour market, the role of immigrant labour and temporary employment visas, the role of the state in family affairs, and the issue of income tax deductions for childcare expenses. Further, these *general* issues are further complicated by *specific* problems that arise in the particular area of hours of work.

Numerous parallels may be drawn between domestic and agricultural workers. Both groups tend to be relatively disadvantaged in the labour market, and both are often involved in informal worktime arrangements that are closely associated with the family as employer. Both involve substantial amounts of offshore labour, including workers on temporary employment programs, and both involve worktime practices in which it is often difficult to establish a "standard" workday or workweek. These similarities are important because they suggest that changes in employment standards which are appropriate for one group may well be appropriate for the other.

Of course, there are differences, and the similarities between agricultural workers and domestics should not detract from the unique problems of domestics. It should be remembered that the family farm, unlike the family home, is a business. Specific differences between the two groups range from seasonal demands to health and safety issues to gender differences in the workforce. As well, domestic workers have articulate and influential organizations that have taken up their cause. Such groups include the International Committee to End Domestics' Exploitation (INTERCEDE) and the Women's Legal Education and Action Fund (LEAF). In contrast, the *employers* of domestics do not have such organized political interest groups (albeit, often being professionals they may represent themselves adequately). With agriculture the situation is the reverse: agricultural workers do not have such groups to represent them, and farmers as employers are well organized politically. In addition, considerable public sympathy is directed to the institution of the family farm. All these factors suggest that organized political pressures may be more favourable to domestics than agricultural workers.

Many of the issues concerning domestics have recently been subject to public debate associated with recent changes in the Employment Standards Act. In 1981, full-time domestics and nannies were brought under the minimum wage provisions, although the minimum could be specified in terms of weekly, monthly or yearly pay. As a result, the lack of a specified standard workweek can lead to an hourly minimum wage below that applied to other covered workers. In 1985, full-time domestics and full-time nannies living outside the household were provided with overtime premium of 1.5 times the minimum wage. Effective October 1, 1987, new legislation required payment of the hourly minimum wage and included coverage of the regular overtime provisions of time-and-one-half of the employee's regular wage (not just the minimum wage) after 44 hours per week. Compensatory lieu-time at the premium rate was allowed when there is mutual agreement (a provision not currently allowed in the Act for other employees). The compensatory lieu-time must be taken within 12 weeks of when the overtime was worked. This overtime coverage was extended to live-in nannies, full-time live-in domestics, and full-time live-in sitters. Other domestic workers, such as part-time domestics and part-time or live-out sitters and companions, are still excluded. However, part-time domestics who live out are covered by the minimum wage provision for the first time.

In addition to reviewing generally the recent debate on these issues, this chapter draws extensively on a background report, *Domestic Workers and Worktime Provisions of Ontario's Employment Standards Act* prepared for the Task Force by Monica Townson.

Coverage under Hours-of-Work Provisions

Current Coverage in Ontario

Currently, the Ontario Employment Standards Act and its Regulations distinguish between two main categories of domestic workers, as indicated in Table 4.1. Prior to 1987, "live-in" full-time domestics or nannies could be considered a separate category because, unlike "live-outs," they were not covered by any overtime premium; in 1987, however, that distinction was removed. In addition, employers are insert table 4.1 now required to keep written records of

Table 4.1
Coverage of Domestics Under Worktime Provisions of Employment Standards Act, Ontario, 1987 [a]

Type of Domestic Worker	Part IV Maximum Hours	Part VI Overtime Premium	Part VII Public Holidays	Part VIII Vacation with Pay
1. Full-time domestic, nanny and full-time live-in, sitter (Reg. 308/87) – **domestics** perform household service; – **nannies** rear children; qualified by formal training or equivalent experience; – **live-in sitter** works more than 24 hours a week primarily attending to needs of children.	exempt (also require 36- and 12-hr. free periods for live-ins[b])	covered	covered	covered
2. Sitters, companions, and part-time domestics (Reg. 285) – only part-time **sitters** and **live-out sitters** are included here; – **companions** care for aged, infirm, or ill members of household in the household; – **part-time domestics** work 24 hours or less for one employer.	exempt	exempt	exempt	exempt

[a] Includes June 1987 changes, effective October 1, 1987.
[b] If the employee agrees to work during the free period, compensatory lieu-time, at the rate of 1.5 hours for each hour worked, must be added to one of the free periods of the next four weeks, or compensation at 1.5 the regular rate must be paid, at the employee's option.

Coverage of Domestics Under Worktime Provisions of Employment Standards Act, Ontario, 1987[a]

daily and weekly hours worked by the domestic, a requirement that previously applied only to domestic servants (babysitters, companions, and part-time domestics).

Basically, there are two main categories of domestic workers. The first category involves full-time domestics or nannies, defined as persons who work in the household more than 24 hours per week. Domestics perform household services, and nannies primarily rear children and are trained or experienced to do so. In the changes effective October 1, 1987, full-time, live-in employed babysitters are treated like full-time domestics or nannies for purposes of worktime provisions of the Employment Standards Act. These groups of full-time domestics, nannies, and live-in babysitters are excluded from the maximum-hours provisions but effectively are covered by the other worktime provisions pertaining to overtime premiums at time-and-one-half, and paid public holidays and vacations. In addition, live-in workers are to be given a 36- and 12-hour free period each week, and compensation at premium rates if they agree to work during that period. As well, the employer is required to give the employee, in writing, the regular hours of work, including starting and finishing times, and the hourly rate of pay. Employers of all domestics must also keep records of daily and weekly hours worked.

The second group of domestics, formally termed "domestic servants," consists of (1) part-time or live-out sitters (with full-time live-in sitters being grouped with full-time domestics or nannies) (2) sitters, and (3) companions — who care for aged infirm, or ill household members. This second group of domestic servants is excluded from all the worktime provisions of the Employment Standards Act, and there is no requirement for consecutive weekly rest periods for those of this group who live in.

Homemakers

In addition to these two categories of domestic workers, there are other groups whose work may be closely related to that of domestics and who are given separate treatment in the Act. For example, in Regulation 285, s. 14, homemakers are defined as persons employed by a person other than the householder to perform homemaking services in the household. Although this person may do the work of a domestic or companion and do it in a household, the homemaker is employed by a nonprofit or for-profit organization or agency, and that organization may employ a number of such homemakers. The homemakers, for example, may provide basic domestic service for a person who has just been discharged from a hospital. The arrangement is usually temporary, although it may involve the homemaker living-in on a 24-hour basis.

Homemakers are not to be confused with "homeworkers," another group that is exempt from the hours-of-work, overtime, and public holiday provisions (but not the paid vacation provision) of the Act. Homeworkers are employees who do their work at home — for example, sewing or typing — although they are employees of a company. Nor are homemakers to be confused with domestic workers employed by a third party who provide maid or cleaning or catering services, as such domestic workers are covered by the regular provisions of the Act. Obviously, however, the distinction between homemakers and domestic service employees of a company may become blurred because their tasks may be fairly similar. This situation could develop into an issue if one category becomes more regulated than the other, since employers may be encouraged to change the nature of their organization slightly to avoid regulations.

Homemakers are exempt from the maximum-hours and overtime provisions of the Act when they are paid at least the minimum wage for 12 hours each work day, but not from the provisions for paid public holidays or paid vacations. Homemakers, however, are, subject to an unusual provision in that no matter how long they work in a day, they shall not be paid for more than 12 hours in a day. This seems to be a reversal of the usual practice of employment standards being protection for *employees*; in this case, *employers* are being protected by not having to pay for more than 12 hours per day, no matter how long the working day. Presumably, this provision reflects the difficulty of establishing the length of a working day for a homemaker who may be living-in on a temporary basis. Nevertheless, this is a difficulty faced by other groups of workers (for example, live-in domestics), whose employers (householders) are not limited to payment for a maximum number of hours, irrespective of the hours worked.

Some Difficulties in Determining Coverage

The hours-of-work provisions for domestics illustrate some of the difficulties in determining who is covered and the extent to which they are covered. Differences in coverage depend upon numerous distinctions: full-time versus part-time; live-in versus live-out; whether the person has the training or experience of, for example, a nanny versus a babysitter or companion; and whether the employer is the householder or a third party, for example in the distinction between a domestic or homemaker. The complexities are compounded by the various groups that are involved: domestics, nannies, babysitters, companions, homemakers, and homeworkers. It is doubtful that most people would know the criteria whereby employees are categorized into one group or the other, and this vagueness makes it difficult for employers to know their obligations and employees to know their rights.

To a certain extent the solution here may be a matter of simply providing the correct information in a readily understood form. The issue, however, is likely to be more complicated given the one-to-one employment relationship that typifies most of these situations. Householders are not typical employers, and household workers are not typical employees.

Nature of Employment

The hours of work of domestics are influenced by a number of characteristics related to the nature of domestic employment: household work, diversity of tasks, occupational immobility for visa domestics, and the nature of the work itself. These characteristics of domestic employment have implications for their worktime practices and, therefore, for the application of employment standards to those practices.

Household Work

All types of domestic employees — domestics, nannies, babysitters, and companions — have the common characteristic of being workers employed in a family household and employed by the family. This quality distinguishes them, for example, from daycare workers who work in an institutional daycare environment, or from residential care workers who care for children or developmentally handicapped persons in a family-type residential dwelling where they also reside (residential care workers are given special treatment under Regulation 440/82 of the Act). Both daycare and residential care workers, as well as homemakers, also differ from domestics in that their employer is not a family member; that is, the employer is a separate third party.

The familial relationship of the domestic has a number of implications for worktime practices. First, the worktime practices of the domestic are usually geared to the worktime practices of the family. In the typical case of a two-earner or single-parent family, this can involve long and irregular hours as well as commute time. Second, the arrangements are often informal. However, in many circumstances it would be desirable to have the expectations clearly specified. Although such informal work arrangements can be mutually beneficial, they can also be exploitive of the party with little bargaining power and can lead to the perception that little worktime is involved. Third, the fact that the employer usually is not always on the premises means that monitoring is difficult, a situation that may give rise to differences in the perception of what constitutes worktime. Fourth, the everyday familial relationship means that both parties have to be reasonably satisfied with the arrangement for it to work out; otherwise, they are permanently living with their mutual problem, and the group most likely to suffer is the children. (Most domestics are employed to care for children.) It is simply not possible for legislation to correct a fundamentally bad match between the domestic and the household, and it is likely to be better to have that employment relationship dissolve. For example, it is not likely that any third-party arbitrator could impose a solution that would be workable if it is fundamentally unacceptable to one of the parties. (This observation does not imply that there is no role for legislation; rather, it suggests that legislation is not a panacea and might not fully correct what is fundamentally a nonworkable relationship.)

Diversity of Tasks and Their Timing

As may be expected of household work, a variety of tasks are often involved. In some cases, the tasks may be straightforward and clearly defined; for example, if a domestic cleans and cooks. In many cases, however, the domestic is a surrogate householder and parent, with the variety of attendant tasks implied by that function. This work can involve considerable discretion on how or when a task is done. It also puts a premium on being informally "available" or formally "on-call" should certain needs arise.

The diversity of tasks implies that it may not always be easy to categorize such household workers clearly as domestics or nannies or babysitters or companions. This difficulty can raise a problem if different regulations apply, since it may create an incentive for employers to try to reclassify their employees to avoid the regulation, and it thereby creates the potential for dispute over such classifications. The diversity of the tasks and their timing also creates the problems of determining what constitutes an hour of work and the appropriate arrangements for different worktime practices. Is eating with the family part of the worktime? Is working time that is split between two periods in the day (the equivalent of a split shift) equivalent to the same hours of continuous work? What if the domestic is required to attend to a child who wakes during the night — is the working time deemed to be those hours when the domestic is actually attending to the child, or does it include all hours during the night that the domestic is required to be there should the need arise? On the one hand, the former arrangement seems unduly unfair to the domestic, since there is no compensation for the "on-call" requirements or extra compensation for the extra disruption created by the time at which the task occurs. On the other, full compensation for the "on-call" requirement, even if tasks are not performed, seems unduly onerous on employers, since it would basically use up a workweek. These examples, many of which are addressed under the new Regulation 308/87, are merely illustrative of the complexities of the issues that arise in regulating the worktime practices under such a diversity of tasks and timing.

Immobility for Visa Domestics

The federal government currently provides Temporary Employment visas for domestic workers, as it does for agricultural workers. Since 1978, the program has required that the work permit arrangements be made before the person enters Canada. Immigration officials go to the sending country and screen applicants. A formal written agreement of employment is involved, specifying the wages, duties and hours of work, and that agreement is enforced through the employment standards branch of the relevant province. Although the program and the nature of the contract is determined by federal immigration officials, it is subject to the employment standards of the relevant provincial jurisdiction.

The agreement allows the domestic to change employers, but not to do work other than domestic work under the visa program for two years. It also requires that the domestic live in, and enables them to have time to take training courses. After two years, the domestic can apply for landed immigrant status and do other types of work or live-out. The program does provide some mobility for domestics in that they can move to another household and work as a domestic. This can inject some competition for domestics, which can give them some bargaining power, although that is likely to be circumscribed by other factors: they may be reluctant to change employers for fear that a change would jeopardize their immigration status; they may be reluctant to exercise their basic rights; they may be reluctant to search for a new employer in case their present employer finds out; and they are unlikely to get a good recommendation from their former employer. Of more consequence, their occupational mobility is severely restricted by their not being able to leave domestic employment for two years. In fact, this appears to be the main, albeit unstated, rationale for the restriction, since otherwise, apparently, many would leave domestic employment if they had the choice.

Nature of Work

The nature of domestic employment itself also has implications for worktime practices and the appropriate policy response to those practices. As discussed, availability for tasks when they arise, nonstandard worktimes, and the difficulty of separating worktime from nonworktime are characteristics of domestic employment emanating from the familial relationship. Among other things, these factors make it difficult to establish a practical definition of a standard workweek for purposes of establishing overtime premiums or the right to refuse overtime. The issue of voluntary overtime is particularly difficult in this environment because it often involves the care of children or others who cannot care for themselves. In such circumstances, it is simply not possible to exercise the right to refuse overtime if, for example, the householders do not return at the agreed-upon time.

Domestic employment tends to have a low status perhaps, in part, because it is a carryover of unpaid household work and tends to be dominated by women, immigrants, and youths, many of whom regard it as a temporary job. It is well known that it is difficult, even in times of high unemployment, to find Canadians to do domestic labour (which has been a rationale for the visa program for both domestics and farm workers). Among other things, the low status of the job may make it easier for employers or the public in general to deem that minimal protection of employment standards is not necessary. In such circumstances, it is easy to believe that domestics should be grateful for their jobs, especially since numerous workers from abroad are trying to get those jobs, and therefore that employment standards may be an unnecessary luxury — relevant to the industrial world but not to the familial relationship of domestic employment. Paternalism may prevail, and although this attitude can have positive effects for employees, it can also lead to oppressive circumstances because of the perception that the employees should be grateful for their position and that they have little to do with their free time in any case.

The nature of the work is such that much of the compensation may be "informal" rather than of a purely monetary nature, ranging from the quality of room and board that may be provided, to casual practices over time-off. There also may be considerable leeway in the amount of personal work that can be done during the regular workday. For live-ins, the absence of commute time can make an otherwise long day not so long, although much of the saving in time may be negated by the fact that being available and on the premises may mean that the day's work is never done.

Clearly, the nature of domestic employment compounds the problems of establishing standard worktime practices and so makes it difficult to establish minimal worktime standards, especially given the perceived status of the job.

Nature and Size of Workforce

Not surprisingly, given the nature of domestic employment and the difficulty of defining the different categories of domestics, it is difficult to get precise estimates of their numbers. All statistics, except those of visa holders, are approximate. The Employment Standards Branch of the Ministry of Labour provided recent estimates of approximately 50,000 domestics and nannies who were exempt from the hours-of-work and overtime provisions of the Act as of 1986 and an additional 10,000 full-time domestics or nannies who lived out and were entitled to a special overtime premium.

Thus, depending upon the groups that are included, there appear to be about 60,000 to 70,000 domestics in Ontario who could be affected by changes in the Act. About 80 per cent appear to be live-out domestics, and of the 20 per cent who live-in, about 80 per cent are on temporary employment visas. Undoubtedly a large fraction of the live-outs were domestics who previously were required to live-in through the visa program.

The domestic workforce is 95 to 98 per cent female, and disproportionately nonwhite and immigrant. Workers are generally low paid, being at or near the minimum wage. These characteristics generally make them what would be considered a disadvantaged workforce. Many workers also leave domestic employment for industrial and other jobs in spite of the low pay they likely will receive in those jobs. Most of the live-ins on the temporary employment visas who subsequently receive landed immigrant status tend to move out of the household and become live-outs or they take on other jobs, suggesting that the live-in arrangement has its disadvantages for them, likely because of low wages, a lack of privacy,

and a feeling of always being on call. On the other hand, housing may be an important component of pay for companions.

Hours and Overtime

Data on hours of work and overtime for the narrowly defined occupational group of domestics are not available from such conventional data sources on hours of work as the Labour Force Survey. Even if such data were available, their accuracy would be subject to some questions because of the informal nature of the worktime arrangements and the problems of determining what is a working hour.

A 1985 report prepared for the Ontario Ministry of Labour, *Study of Wages and Employment Conditions of Domestics and Their Employers*, by Currie, Coopers and Lybrand, does provide information on the hours of work of domestics in Ontario. INTERCEDE has criticized the methodology of that report because of the small sample size (345 households completed the survey — 11.1 per cent of the total 3,121 originally contacted) and the fact that the employers were asked for permission to interview their domestic employee; those employers who felt they were violating the worktime practices of their visa contracts or even of a perceived norm may not have granted permission, thereby biasing the results toward understating hours of work. In addition, the domestics were told that their employer was aware of their participation in the study, which may have made them reluctant to state their true hours of work. Finally, the survey was conducted over the telephone, and it is possible that live-in domestics, telephoned at the home of the employer, were inhibited in providing their responses.

Subject to these caveats, a number of generalizations on the worktime practices of domestics emerge from the report. On average, domestics reported that they worked approximately 41 regular hours per week compared with the 39 hours reported by their employers. This difference in perceived hours, although not substantial, does highlight the difference in the perception between the parties, a difference that is fostered by the informal nature of the worktime practices. Longer hours tended to be worked on a regular basis by domestics who are on temporary work visas (44 hours), recruited through an agency (44 hours), live-ins (43 hours), and employed by upper-income households (42 hours). To the extent that these figures are correct, they suggest that the average working hours of domestics are somewhat higher than the average working time of 36.9 hours per week for all workers in 1985 in Ontario. For full-time workers, the average regular weekly hours for domestics were 42.3 hours, compared with 40.6 for the Ontario workforce.

In contrast to the figures reported by Currie, Coopers and Lybrand, INTERCEDE reported an average workweek of 65 hours, mainly for live-in domestics. Obviously, this figure is dramatically higher than that for the average workforce and even is much higher than that of full-time agricultural workers, who averaged 48.6 hours per week (41.6 hours when part-timers are included) in 1985. In all likelihood, much of the difference between the figures reported for domestics reflects differences in how availability for work is counted, and whether they treated on-call time as working time or not — factors that complicates the regulations of hours for such workers.

Currie, Coopers and Lybrand reported that 36 per cent of domestics typically work overtime, and those who work the overtime average almost 3 hours of overtime per week. This 36 per cent of domestics who typically work overtime is about three times the 13 per cent who typically work overtime in the Ontario workforce as a whole. However, the average of 3 overtime hours for those domestics who work overtime is about one-third the average of 8.3 hours for those workers who work overtime in the Ontario workforce as a whole. (Figures for the Ontario workforce are from the Phase I Report of the Task Force). That is, overtime is more common among domestic workers than other workers, but the average amount of overtime for those domestics who work overtime is not as great as for the total workforce working overtime. Again, this statement is based on the accuracy of the Currie, Coopers and Lybrand figures. If the INTERCEDE figures of 65 hours are correct, then the average overtime among domestics would be 21 hours above a 44-hour week.

According to the Currie, Coopers and Lybrand report, scheduled time-off hours for domestics are interrupted by overtime work at some time during the month for 36 per cent of all domestics (41 per cent for live-ins and 29 per cent for live-outs). The average number of such interruptions is 2.5 per month, with an average length of 4.1 hours. Compensation for the interruptions is given in 87 per cent of the cases, roughly equally divided between monetary compensation and compensatory time-off, although the latter arrangement is much more common for live-ins. Approximately 14 per cent of domestics are on call at some time in a typical month, averaging 1.2 times per month for a period of about 3.6 hours each time they are on call.

About 80 per cent of the domestics receive 2 weeks' paid vacation per year and about 95 per cent receive the 7 statutory holidays. Those who work the public holidays tend to work one of every five holidays, with slightly under half these workers given extra pay or equal time-off.

Employer and Employee Attitudes

Employer Attitudes

Systematic evidence is not available on attitudes of employers toward the worktime practices of their domestic help. However, in the Currie, Coopers and Lybrand study, they did tend to have a perception that the regular work was almost 2 hours less per week than that perceived by their domestic help.

In all likelihood, employers of domestics would find maximum hours more restrictive than an over-

time premium because the latter, at least, would enable an employer to utilize an employee's help, albeit at a premium rate. Even a maximum-hours limit, however, would not be as restrictive for householders who employ domestics as it would be for farmers who employ farm workers because the use of domestics is not as subject to seasonal or peak demands.

What is likely to be important for the employers of domestics, however, is that help be available on an occasional basis should the need arise. A typical employer of a domestic, for example, may work a 40-hour week (longer for a professional, who is often the employer), which could easily total 50 hours away from the home if commute time is added. This means that it could be very difficult if the domestic had the right to refuse overtime at, for example, 40 or 44 hours. Even at 50 hours, this right to refuse could allow no leeway for a householder whose work plus commute time totalled 50 hours.

Employee Attitudes

Table 4.2, based on the Currie, Coopers and Lybrand study, highlights the extent to which domestics express dissatisfaction with their various worktime arrangements and other employment conditions, ranked in descending order for live-in domestics. Even if the figures do not accurately reflect the absolute level of dissatisfaction, they are likely to reflect adequately the relative ranking of the issues for domestics. Overall, it is clear that live-in domestics express much more dissatisfaction than live-out domestics. The amount paid for working overtime ranked highest in dissatisfaction, followed by salary, the amount of overtime, and the total weekly hours.

In terms of the policy options that are available, it would appear that domestics are most dissatisfied with not receiving an adequate overtime premium. Having a maximum-hours requirement would be of distinctly less importance, as evidenced by the dissatisfaction expressed with respect to the questions pertaining to the amount of insert table 4.2overtime and the number of hours worked (although these issues werenot inconsequential). From the responses recorded in Table 4.2, it is not possible to tell the importance to domestics of having the right to refuse overtime (such a question was not directly asked). Having this right to refuse does not seem as important as receiving adequate compensation for overtime (ranked first), but it could help alleviate dissatisfaction with the amount of overtime and the number of hours the domestics have to work (respectively ranked third and fourth).

Table 4.2
Dissatisfaction of Domestics with Hours of Work and Other Employment Conditions, Ontario, 1984

Rank[a]	Employment Condition	*Per Cent Dissatisfied* Live-in	Live-out
1.	Amount paid for working overtime	26.8	13.5
2.	Salary	21.2	13.4
3.	Amount of overtime required to work	15.0	4.3
4.	Number of hours required to work in a week	14.8	8.0
5.	Living facilities provided by employer	9.4	n.a.
6.	On-call procedures required by employer	7.5	0.0
7.	Number of evenings required to work	7.1	2.3
8.	Scheduled vacations	6.3	5.9
9.	Job in general	6.1	3.6
10.	Time periods when time-off scheduled	6.1	1.5
11.	Number of days required to work	3.3	1.8
12.	Needs provided by employer	2.4	3.7
13.	Scheduled public holidays	2.3	1.2

[a] Ranked in descending order, from highest to lowest per cent dissatisfied, for live-in domestics.

Source: Currie, Coopers and Lybrand, *Study of Wages and Employment Conditions of Domestics and their Employers.* Toronto: Ontario Ministry of Labour, 1985.

Pros and Cons of Regulating Hours for Domestics

Clearly, regulating the hours of work for domestics will pose difficult problems in large part because of the often informal and familial nature of the employment relationship and, for live-ins, because of the problem of defining precisely the hours of work. Nevertheless for live-outs the hours of work are usually well-defined. For live-ins from the visa program, and often those hired through an agency, although no effective enforcement mechanism exists, the hours are specified in the agreement. In addition, there may be a benefit in compelling employers to be specific about their worktime practices and to keep records, since this would make them aware of what they are requiring. Otherwise, there may be a tendency to underestimate or not fully appreciate the requirements that are involved under informal practices. Under the new Ontario regulation, when the domestic is free to leave the household, she is not working, although she in fact remains in the home.

Extensive regulation is not likely to be enforceable on an intransigent employer. It is simply not possible to legislate fairness in such a one-to-one employment relationship if either party is unwilling to accept the standard. A complaints-based enforcement mechanism is likely to be particularly inefficient, especially for foreign workers whose written employment agreements are not honoured. Nevertheless, legislation can minimize the need for the individual parties to have to bargain over many of the issues and, hence, can reduce the adversarial climate that could result from such individual bargaining. In this area, the legislative standard will be the norm for a larger segment of the workforce; hence, the need for individual bargaining will be minimized.

As discussed previously, there tend to be three potential rationales for regulating hours of work: health and safety; job creation; and providing a minimum safety net and attaining community standards with respect to hours of work. The health and safety issue is unlikely to be very prominent for domestics, in part because theirs is not a hazardous occupation and in part because there are slack periods. Job creation is unlikely to be an issue because it is already not possible to find many Canadians to do such work, in spite of high unemployment.

The main rationale pertains to providing a safety net of minimal standards for a group that is otherwise disadvantaged, consisting of a high proportion of low-wage, female, and immigrant workers. As with farm workers, it is important to remember that the relevant question is not: "Should these workers receive certain minimal standards with respect to worktime practices?" Community standards have dictated that that question has been decided in the affirmative for the majority of the workforce. Rather, the relevant question is: "Is the employment situation of domestics sufficiently different from that of other workers to merit different treatment, in particular, exclusions from many of the worktime practices?" This question focusses the debate on the issue of the *differences* in the employment situation of domestics as opposed to other workers, and it obviates the need to debate the basic pros and cons of such worktime standards in general. That latter debate has already been decided, rightly or wrongly, for the majority of the relevant workforce. The issue is whether domestic employment is sufficiently different to merit different treatment.

For domestics, as for other workers, there is always the threat that the higher cost from regulating hours of work will lead to reductions in their employment opportunities. For domestics, however, unlike for other specific groups, there is some survey evidence on this point. In the Currie, Coopers and Lybrand study, employers were asked how they would respond to a requirement to pay a time-and-one-half overtime premium after 44 hours. Overall, 32 per cent responded that they would change their use of domestics (42 per cent in the case of live-ins and 17 per cent in the case of live-outs). Of those who would change their use of domestics, 39 per cent said they would reduce their hours to 44, one-third said they would stop using a domestic, and slightly more than 10 per cent said they would probably split the workload with another domestic. In other words, approximately one-third of the one-third (i.e., about one-ninth) who said they would change their use of domestic labour would do so in the manner that would be considered an undesirable by-product of the overtime premium — not hiring domestics.

SUMMARY

- *The treatment of domestic workers under employment standards is controversial because it is compounded by other social issues, such as the position of women in the labour market, the role of immigrant labour and the nature of temporary employment visas, the role of the state in family affairs, and the funding of daycare.*
- *In addition, the regulation of worktime practices is further complicated by a number of special considerations relevant to domestic employment: the informal and familial nature of the employment relationship; the difficulty of determining and monitoring working time; the gearing of the worktime of domestics to the worktime of the householders; and the difficulty of precisely categorizing the different household employees — domestics, nannies, babysitters, companions, homemakers — and the possibility that employers may reclassify their household employees if the regulations differ.*
- *Currently, full-time domestics or nannies, and full-time, live-in babysitters are covered by the existing worktime provisions of the Act requiring an overtime premium after 44 hours, 7 paid public holidays, and 2 weeks' vacation per year. They are not covered by the maximum-hours provisions and do not have the right to refuse overtime. With mutual agreement, time-off in lieu of the overtime premium can be used at the premium rate (an op-*

tion that does not apply to other workers under the Act). Babysitters, companions, and part-time domestics are excluded from all the worktime provisions of the Act. Homemakers, who do the work of domestics or companions but are hired by an independent employer, are exempt from the maximum hours and overtime provisions, but not from the provisions for paid public holidays or paid vacations.

- *In 1985, full-time live-out domestics were brought under the overtime provisions. The June 1987 changes, effective October 1, 1987, require payment of the* hourly *minimum wage and require the regular overtime premium. The option of lieu-time at the premium rate and under mutual agreement also was introduced. This coverage was extended to nannies, full-time domestics, and full-time live-in sitters.*
- *The different categories of domestic labour, and the distinctions between full-time versus part-time and live-in versus live-out, make it very difficult to determine coverage under the Act, which in turn makes it difficult for employers to know their obligations and employees their rights.*
- *Although precise numbers are difficult to obtain, currently there appear to be approximately 60,000 to 70,000 domestics in Ontario. About 20 per cent are live-ins, most of whom are on temporary employment visas. Almost all are female and they are disproportionately nonwhite and immigrant.*
- *The bargaining power of the visa domestics, who are required to live in, is severely compromised by the fact that they cannot do work other than domestic work for two years, although they can change employers.*
- *There is considerable controversy over the number of hours worked by domestics. One source reports an average of about 41 hours per week, with 36 per cent of domestics working overtime and averaging about 3 hours of overtime per week. Another source reports an average workweek of 65 hours.*
- *Domestics have expressed the amount they are paid for working overtime as their main area of concern, followed by salary and then the amount of overtime and the number of weekly hours they are required to work. Live-ins have expressed considerably more dissatisfaction than live-outs.*
- *Health and safety issues are unlikely to be an important reason for restricting the hours of domestics; nor is the potential for job creation an important reason, since it is very difficult to get Canadians to do such work in spite of high unemployment.*
- *The main rationale pertains to providing a safety net of minimal standards to a disadvantaged group with little bargaining power.*
- *The community norm has dictated that this safety net be provided to most other workers, so the issue is whether domestic employment is sufficiently different to merit exclusion.*
- *If faced with an overtime premium of time-and-one-half after 44 hours, about one-third of employers of domestics said they would change their use of domestics (more so for live-ins), with about one-third of these saying they would no longer use domestics and slightly more saying they would not have the overtime worked.*

CHAPTER 5
Trucking

Unlike agricultural and domestic work, which have proven to be controversial areas because of the social issues involved, trucking is relatively uncontroversial on these grounds. To be sure, there are related broader issues such as deregulation, foreign competition, jurisdictional rights, and the role of the small owner/operator. Nevertheless, these tend not to generate the emotive controversy associated with such issues as the role of immigrants and visa workers, bankruptcies on family farms, the role of the state in familial employment relationship, and the disadvantaged position of many farm workers and domestics. But although the issues related to trucking may not be as controversial as those concerning agriculture and domestics, they certainly are as complex, given the complexity of the industry itself.

In outlining the worktime issues for trucking, this chapter draws extensively on a background report prepared for the Task Force by Fred Lazar, *Trucking Industry and the Worktime Provisions of Ontario's Employment Standards Act*. In addition, the Ministry of Transportation and Communications (MTC) is presently involved in a national effort to develop a national safety code for the trucking industry, and its research has been an invaluable source of information.

Nature of Industry

The trucking industry itself has a number of special characteristics that have important implications for the industry's worktime practices, and hence, the regulation of those practices. These characteristics can be categorized as follows: a complex, diverse structure; environmental and biological constraints; deregulation; and safety aspects concerning public roads.

A Complex, Diverse Structure

The complexity of the trucking industry is illustrated by the fact that it can be categorized by the type of carrier, the geographic boundary or jurisdiction of the firm, or the type of goods transported. The main type of carriers are: (1) for-hire carriers or trucking companies that transport other people's goods; (2) private carriers owned, leased, or contracted by companies to transport their own goods; (3) independents or owner/operators who operate their own vehicles who work for a for-hire carrier, or who work for a private carrier; and (4) carrier services or leasing firms that lease trucks and drivers. These different types of carriers often have different licensing requirements.

In addition to these distinctions by type of carrier, there is a distinction by the geographic boundary and, hence, the jurisdictions in which the carriers operate. They can be local, intercity (but intraprovincial only), interprovincial, or international. There can also be a distinction by the type of goods transported: general freight, small parcels, agricultural goods, household goods, or bulk material in dump trucks. The transportation of people via public or private transit adds another dimension albeit beyond the scope of this analysis, which focusses only on the transportation of goods in the trucking industry.

This complex, diverse structure of the trucking industry has a number of implications for worktime practices and their regulation. First, it implies that there will be a diversity of worktime practices. Some practices may involve regular hours, as may be the case if a retailer has a private fleet to deliver its goods during regular store hours. Others may involve irregular hours, as may be the case when a for-hire carrier is geared to the scheduling of its customer. Second, the complexity can give rise to confusion over the relevant coverage of legislation, when coverage differs by sector. This confusion was illustrated in the public meetings held by the Task Force, when several representatives of the trucking industry expressed uncertainty over where they were dealt with in the Act. Third, the diverse structure may enable employers to change the jurisdiction under which they operate to avoid regulations that may be more stringent in one jurisdiction than another. Fourth, the mix between large and small for-hire carriers, and among for-hire carriers, private carriers, and independent operators, results in considerable diversity between small and large businesses and between employees and the self-employed. Thus, regulating the hours of employees may have a differential impact, if, for example, the self-employed are excluded (as is the case with labour standards), or if small firms do not have a pool of drivers to draw on should long hours be necessary.

Environmental and Biological Constraints

As with agriculture, the worktime practices of the

trucking industry are often affected by numerous environmental and biological constraints. Weather conditions, accidents, and road construction can lead to an unforeseen need for long hours, and these situations usually would not qualify employers for exemptions from the maximum-hours provisions. Such an exemption is allowed only "in case of an accident or in case of work urgently required to be done to machinery or plant."

In many circumstances the trucking industry is subject to the constraints of the worktime practices of its customers. In agriculture, for example, that may mean peak seasonal demands and the handling of perishable products. In roadbuilding, long days during a short season may be involved. The work in the trucking industry may involve substantial "down time" for the driver — for example, while trucks are being loaded or unloaded — and in many circumstances it may be extremely disruptive if maximum hours are less than those of clients. The upsurge of just-in-time inventory systems has also placed a premium on the timeliness of the service that the trucking industry can deliver.

Also, in most circumstances, there is one driver per vehicle, and the work is often conducted away from the driver's home base. In such situations, it may be difficult if not impossible to substitute another driver to keep the vehicle operating on a continuous basis. Given the capital cost of such equipment, this consideration is important.

Deregulation

The trucking industry is experiencing rather dramatic changes, stemming mainly from the deregulation that has occurred in the United States and is impending in Canada. In the United States, deregulation has had numerous repercussions: a decreased use of private carriers and an increased use of subcontractors and owner/operators; a consolidation of the large common carriers into fewer firms but with a larger market share; fiercely competitive practices; and, associated with many of the above factors, decreased unionization.

These repercussions of deregulation have a number of implications for worktime practices and their regulation. First, there is greater scope for independent owner/operators who are self-employed and thereby not subject to hours-of-work regulations through labour standards. Second, de-unionization means fewer employees have the protection of a collective agreement which otherwise tends to be more generous than that of employment standards legislation. Third, deregulation on the product-market side has put increased competitive pressure on employers to be cost conscious. This in turn has increased their resistance to any cost concerns that may eminate from the increased regulation of the hours of work of their employees.

All does not imply that labour standards legislation is inappropriate in such cost conscious competitive environments. On the contrary, a fair standard, applied appropriately to the whole industry, means that fair employers will not have to compete with those who provide substandard employment practices. Those who go out of business because they cannot afford the employment standard, perhaps ought not to be in business in the first place. Applying fair and reasonable standards at a time when an industry is undergoing fundamental restructuring may ensure that such restructuring, including the entry of new firms, is based upon the requirement to comply with a reasonable set of employment standards, including worktime practices. In the trucking industry, however, this approach is complicated by the fact that much of the restructuring involves owner/operators who are self-employed (and, hence, not covered), and it involves the possibility that firms may have some flexibility in determining the jurisdiction — and, hence, the employment standards legislation — under which they operate.

In Ontario, the dividing line between whether a trucking company is under federal or provincial jurisdiction is not always clear. In addition, the Task Force has been told, at little cost some companies can change their contractual arrangements with potential shippers/customers and, hence, the jurisdiction under which they fall.

Safety Aspects Concerning Public Roads

A fourth characteristic of the trucking industry which has important implications for the worktime practices is that commercial driving often by its nature shares the public roads with other vehicles including passenger cars. This means that any fatigue effects from long hours can have serious implications for the health and safety not only of the driver but also of the parties who share the road. Thus, even if drivers are willing to work long hours in return for adequate compensation from their employers, this arrangement is not simply a matter of a private contract between those two parties.

Unfortunately, there is not a wealth of information on the relationship between driving times and accidents in the industry, and the information that exists is not always in agreement. Common sense suggests that long hours with only relatively few rest periods can result in more accidents. Restricted hours, however, may mean that relatively more new, inexperienced drivers could also lead to an increased number of accidents. In addition, more mandated rest periods may lead to more "stop" and "start" periods, which could be particularly accident-prone periods.

Clearly, the health and safety dimension is a complicated one, sufficient to warrant that maximum hours and rest periods for drivers be handled by health and safety legislation or by legislation regulating driving time in the interest of public safety. In other words, within the provincial jurisdiction, regulation of long hours seems to fall more appropriately within the purview of the Ministry of Transportation and Communications. This ministry is involved in the general regulation of the trucking industry, and has

both the expertise and monitoring facilities. This would also enable coverage of self-employed owner/operators.

Nature and Size of Workforce

It is difficult to present a precise picture of the workforce in the trucking industry, in part because the statistics seem to vary depending upon the types of employees they include. For example, a fact sheet from the Ministry of Transportation and Communications indicates that in 1985 there were approximately 63,000 employees in trucking in Ontario, one-third of whom were unionized. These figures include nondrivers but excluded large segments such as employees in private fleets. A consultants' report for the MTC estimated that in 1980 in Ontario, there were between 162,500 and 195,000 persons (the midpoint of that range being approximately 180,000 drivers) employed as drivers in the trucking industry, about 40 per cent of whom were employed by the for-hire commercial carriers and 60 per cent by companies in the private fleets or by driver-leasing companies. This figure does not include nondrivers.

A 1984 survey conducted by Statistics Canada indicated that provincially there were about 41,000 employees employed in the large for-hire carrier sectors and about 30,000 employed in private fleets. Most of the 41,000 employees in the large firms were involved in intercity transport, with slightly more involved in interprovincial work than international work. Also, about half the 41,000 employees in the large firms were drivers, the rest being involved in maintenance, administration, or terminal and platform work. Since nondriving employees are likely to exist mainly in the large for-hire firms (and also in private carriers and some small for-hires), this estimate of 20,000 nondriver employees is also likely to be representative of the industry. The average compensation for such employees was about $28,000 per year, being fairly similar for drivers and nondrivers.

These various figures imply that there are probably about 180,000 drivers in the trucking industry in Ontario, about 75,000 in the for-hire sector, and 105,000 in the private fleets of companies or in driver-leasing companies. In addition, there are about 20,000 nondriving employees, mainly in the large for-hire companies.

As indicated previously, trucking is characterized by a substantial number of self-employed owner/operators, a position that many employees strive to attain. Annual compensation in 1984 averaged about $28,000, about the average earnings for full-time male workers in Ontario in 1984, trucking being a predominantly male occupation. (The average earnings of full-time and part-time males was about $22,000, and the corresponding figure for females is slightly over $12,000). The training requirements can range from fairly minimal in the case of local cartage, to more substantial in the case of large trucks on international routes. Currently, there is an extreme shortage of qualified drivers in Ontario.

Coverage under Employment Standards

Current Ontario Provisions

Table 5.1 illustrates the coverage, under the various worktime provisions of Ontario's Employment Standards Act, of various employees in the trucking industry. For comparative purposes, other related groups are also included.

The Act makes a distinction between employees who are engaged in local cartage and those engaged in highway transport. Local cartage involves the for-hire transport of goods within three miles of a municipality. Highway transport involves the for-hire transport of goods beyond the local area and involves licensing under the Public Commercial Vehicles Act. The licence is not required for the transport of fresh fruits or vegetables grown in the continental United States, for readily mixed concrete, for domestic and municipal garbage, or for farm or forest produce (other than livestock or milk) that are the products of the farm or forest from which they are being transported. The Public Commercial Vehicles licence is not required as well for companies whose primary business is something other than truck transportation (for example, construction, manufacturing, wholesale or retail trade). Such companies can operate their own fleet of private not-for-hire carriers without this a licence. They are subject to the worktime provisions of their own sector.

Situations in which drivers are subject to the worktime provisions of their own sector can lead to considerable confusion over the application of the Act. This is so because different sectors have different worktime provisions under the Act. Some sectors, like agriculture, are exempt from most worktime provisions. Others, like construction, are exempt from the maximum-hours provisions but not the requirement to pay overtime after 44 hours per week. Others, like retail stores, logging, milk products, quarry, sand and gravel, concrete plants, and asphalt plants have one of the 26 industry permits that grant an additional 12 hours per weekinsert table 1insert table 1 cont(effectively raising the maximum from 48 to 60 hours) for certain designated special categories of employees or for all nonoffice employees, including drivers.

The confusion arises because truck driving involves both an industry designation and an occupational designation. The industry designation involves the for-hire segments of local cartage and highway transport; drivers in these sectors are allowed an additional 12 hours (implying a 60-hour maximum) through the special occupational designation. The occupational dimension arises because "a delivery truck driver or his helper" are two of the occupational designations for special categories of employees for whom the Director may issue a permit, under section 20(1)(a), granting an additional 12 hours per week beyond the normal maximum of 48 and thereby effectively allowing a 60-hour week for such workers. This occupational exemption could be granted to a company in any industry as part of the annual 100-hour permit

Table 5.1
Coverage of Worktime Provisions of Ontario's Employment Standards Act, Trucking and Related Occupations, 1987

Type of Employee	Part IV Maximum Hours	Part VI Overtime Premium	Part VII Public Holidays	Part VIII Vacation with Pay
Driver,[a] local cartage[b]	60[c]	Special[d] 1.5 at 50	Covered	Covered
Driver, highway transport (PCV)	60[e]	Special[f] 1.5 at 60	Covered	Covered
Nondrivers, designated occupation[g]	60	Covered 1.5 at 44	Covered	Covered
Nondrivers, nondesignated occupation[g]	Covered 48	Covered 1.5 at 44	Covered	Covered
Drivers, private fleets of companies	After[h] 60	Covered 1.5 at 44	Covered	Covered
Independent owner/operator	Exempt since self-employed			
Taxi driver	None[i]	Exempt	Exempt	Covered
Interurban & municipal transit drivers	50[j]	Covered 1.5 at 44	Covered	Covered

[a] Operator or operator's helper of a for-hire carrier.
[b] Within 3 miles of municipal boundaries.
[c] Based on the legislative maximum of 48 hours per week plus an additional 12 hours per week, under the local cartage special industry permit number 15, for a number of "special categories of employees" which include a delivery truck driver or his helper (section 20(1)(a) of the Act).
[d] Under Regulation 285, section 17(1).
[e] As in footnote c, but under the highway transport special industry permit number 11. The highway transport special industry permit specifically gives highway transport drivers the additional 12 hours per week.
[f] Under Regulation 285, section 17(2). Since 60 hours is the maximum allowed under the industry permit, any overtime hours beyond 60 would come from the additional permit issued under section 20(2).
[g] Under the special industry permits granted to local cartage and highway transport, nondrivers who are in the special designated occupations (maintenance man, receiver, shipper, watchman) would also have an additional 12 hours. All others, such as administrative personnel, would not have these additional maximum hours.
[h] Drivers in the private not-for-hire fleets of companies are subject to the provision of the industry of their company. Normal provisions are for maximum hours of 8 per day and 48 per week. However, in many circumstances (e.g., retail stores, quarry, sand and gravel, concrete plants, asphalt plants), special industry permits have been granted that provide for an additional 12 hours per week for a delivery truck driver or helper as a special designated occupation.
[i] Under their industry permit number 21, they are granted "hours as required," although they retain the right to refuse after maximum hours.
[j] Under their special industry permit number 13, transit operators are covered by the 100-hour annual permit, which implies an additional *average* of 2 hours per week to the legislated maximum of 48, under Section 20(1)(b). Designated employees are covered by the usual additional 12-hour per week permit under section 29(1)(a).
Source: Derived from Ontario's Employment Standards Act and its Regulations.

(the 12-hour weekly permit for the designated occupations always accompanies the 100-hour annual permit for regular employees). It also is granted to the 26 industries holding industry permits that permanently grant 100 annual hours (or 12 weekly hours) to any employee — including a delivery truck driver or helper — of the designated occupations.

In essence, whether in the for-hire sectors of local cartage and highway transport, or in the not-for-hire private fleets of companies or most other industries, most drivers appear to be subject to a 60-hour weekly maximum. Some may even have no maximum hours if they are in sectors like agriculture. The only drivers who would have maximum hours below 60 are those engaged in public and private transit and those who operate not-for-hire carriers in sectors that do not have a 100-hour permit or an industry permit. Since these permits have "been there for the asking," one can infer that the maximum workweek for drivers is predominantly 60 hours or more.

As indicated in Table 5.1, with respect to the overtime premium the picture differs somewhat. Here the special occupational designation does not matter; under normal circumstances such workers, including drivers, would be subject to the legislated premium of time-and-one-half after 44 hours in the week. Drivers in the for-hire sectors of local cartage and highway transport are, however, subject to a special overtime provision whereby the premium rate of time-and-one-half does not have to apply until after 50 hours in local cartage and 60 hours in highway transport (Regulation 285, sections 17(1),(2)). Non drivers in these sectors, and drivers in the other sectors, are subject to the normal overtime provisions of their sectors, which usually involve time-and-one-half after 44 hours. Taxi drivers are exempt from the overtime provisions of the Act. Drivers in all sectors are covered by the vacation-with-pay provisions; only taxi drivers are exempt from the public holiday provision.

Clearly, there is a bewildering array of worktime provisions for the different segments of trucking and related sectors. In some cases, truck drivers doing exactly the same work are subject to different provisions. For example, drivers of for-hire carriers at a construction site are subject to a 60-hour maximum workweek. They receive an overtime premium of time-and-one-half after 50 hours if they are involved in local cartage (that is, within the municipality) but after 60 hours if they transport goods from elsewhere and are under the highway transport designation. If they are driving as part of the not-for-hire fleet of the construction company, they will have no maximum hours but will again receive the overtime premium after 44 hours. If, in the following week, any one of those drivers hauled a load of tomatoes (if employed by the farmer) he or she would not be subject to any maximum-hours provisions or receive any overtime. Clearly, this situation can make it difficult for employers to know their obligations and employees their rights, especially because the same drivers could be involved in more than one of these driving activities.

Rationales for Special Provisions

Although there is a bewildering array of provisions for different worktime practices in the different segments of the trucking industry, the main features essentially involve a 60-hour maximum workweek versus the usual 50-hour maximum (the latter based on the legislative maximum of 48 plus an average of 2 additional hours from the 100-hour permit). In addition, drivers in the for-hire sector are not covered by the time-and-one-half overtime premium until after 50 hours in local cartage and 60 hours in highway transport, as opposed to the usual 44-hour trigger.

There does not appear to be extensive documentation of the rationale for these special provisions in trucking, apart from of the general rationale for flexibility. Presumably, the significant amounts of "down time," the possibility of rest periods, and the difficulty of monitoring hours are all contributing factors. The current shortage of drivers would make maximum-hours restrictions particularly onerous. In many situations, trucking is closely tied to other sectors — for example, agriculture and construction, where hours are long, in part because of short seasons. The rationale for the overtime premium not applying until the higher levels of 50 hours in local cartage and 60 in highway transport likely stems from the fact that long hours are perceived as a necessary ingredient of those jobs, especially in highway transport, given the often substantial distance from the home base. In private not-for-hire fleets, drivers presumably are treated similarly to the other employees of their company, being given the overtime premium after 44 hours. Interestingly, however, drivers in the for-hire carriers are treated differently from nondriving, nondesignated employees in their company.

The different treatment of for-hire carriers and not-for-hire private carriers may reflect the fact that for-hire carriers are a more organized interest group, whose interest focusses on for-hire trucking because that is all they do. In contrast, not-for-hire private fleets are simply one component of a company's operation, and for purposes of internal equity they may not object strongly to their drivers being treated like their other employees.

The lower maximum limit for public and private transit drivers likely reflects the fact that they are handling people and not goods. For this group, any adverse consequences from fatigue could affect not only other drivers on public roads but also the passengers in the transit vehicles.

Practices in Other Jurisdictions

The regulations on hours of work in trucking in the federal jurisdiction are of particular importance because there is some potential for overlap of jurisdictional authority in trucking, and the firms have some flexibility in determining their jurisdiction. This situation can give rise to jurisdictional conflicts and ambiguities, as well as an employer changing jurisdiction to avoid regulation.

In the trucking industry, the interprovincial or in-

ternational aspects fall under federal jurisdiction and, hence, the Canada Labour Code, for purposes of employment standards. Although there have been test cases over what constitutes interprovincial transportation, the general criteria hinge on whether the carrier has arranged its operations to be able to provide such service on a regular basis.

Under the federal code, the regulations for the regular workforce specify maximum hours at 48 per week, and an overtime premium of time-and-one-half after 8 hours per day or 40 per week. There is a permit system for exceeding the maximum hours. Motor vehicle operators are subject to a special set of regulations, as summarized in Table 5.2. Basically, the maximum hours are 10 per day of driving time and 14 per day and 60 per week of total on-duty time. Permits, however, can be granted to extend maximum hours to 15 per day of driving time and 18 per day and 70 per week of total on-duty time. The overtime premium of time-and-one-half applies after 9 hours per day or 45 hours per week for city driving and after 60 hours per week for highway driving.

Overall it appears that the maximum-hours and overtime provisions in the federal jurisdiction are roughly comparable to those in Ontario for highway transport because the notion of on-duty time corresponds to the working hours under Ontario's legislation. That is, both Ontario and the federal jurisdiction have maximum hours of 60 per week, although the federal code also has a daily maximum of 15 hours of duty time and 10 of driving time. Both jurisdictions allow additional permits to exceed those hours. The Ontario and federal jurisdictions have an overtime premium of time-and-one-half after 60 hours for highway driving, although the federal code has a slightly more stringent requirement for city driving, with a trigger at 45 hours per week (versus 50 in Ontario) in local city driving, and at 9 hours per day (versus no daily trigger in Ontario). The two jurisdictions appear sufficiently close that dramatic changes in the Ontario Act could induce trucking companies to try to change their jurisdictions.

It is noteworthy that the federal legislation does not make a distinction between for-hire carriers and not-for-hire private fleets of companies. In addition, the federal code appears to cover owner/operators.

United States

The Fair Labor Standards Act in the United States generally has no maximum-hours requirement but does have an overtime premium of time-and-one-half after 40 hours. However, Section 13(b)(1) of that legislation provides an exemption from the overtime requirement for transportation employees designated by the Secretary of Transportation. The Department of Transportation, under the federal Motor Carrier Safety Regulations, has specified maximum hours aimed at enhancing highway safety although not at establishing fair labour practices. For driving time, they are 10 per day and 60 per week (7 consecutive days) or 70 per 8 consecutive days. For on-duty time, the maximum hours are the same, except 15 hours are allowed per day. Up to 2 hours may be added to the maximum hours if there are adverse weather conditions. No distinction is made between for-hire common carriers and the not-for-hire private fleets of companies.

Other Provinces

Among the other Canadian provinces, only Alberta and Saskatchewan have special overtime pay provisions for the trucking industry. In Alberta, the time-and-one-half premium rate applies after 10 hours per day and 50 per week in highway transport (trucks of 910 kilograms or more) as compared with the regular trigger of 8 per day and 44 per week. In local cartage, the regular trigger applies. No distinction is made between for-hire carriers and not-for-hire private fleets.

Table 5.2
Federal Maximum Hours and Overtime Regulations, 1987

Type of Driver[a]	Maximum Hours Driving	Duty[b]	1.5 Overtime Premium After[c]
City	10/day[d]	15/day 60/week[e]	9/day 45/week
Highway	10/day[d]	15/day 60/week	60/week
City or highway with permit	15/day	18/day 70/week	as above

[a] If both city and highway or combined with other employment, then the class of employment for which most hours are worked applies.
[b] In addition to driving time, on-duty hours include the time when the operator is directly responsible for the vehicle. It does not include authorized meal or rest periods while en route, or periods of waiting up to 2 hours per shift.
[c] Hours refer to on-duty hours, not just driving time.
[d] Day refers to work shift. Operators can extend their driving hours from 10 to 12 per shift, but not more than twice during a week.
[e] Week throughout the table refers to any 7 consecutive days, except that for purposes of maximum hours, operators can remain on duty for up to 70 hours in any 8 consecutive day period when employed by carriers who operate every day in the week.
Source: Derived from Canada Labour Code.

The Director of Employment Standards can also approve agreements between employers and employees for wages and overtime pay to be based on work performed, mileage, or any other reasonable basis. The normal maximum hours of 12 per day applies to trucking.

Saskatchewan has no maximum hours of work, but a time-and-one-half overtime premium exists after 8 hours per day and 40 per week for the regular workforce. The overtime provision applies to all truck drivers except for the following groups: drivers in the logging industry or in the northern townships; and wholesale drivers/ salespeople selling and delivering dairy products, beverages, or bakery products to retailers in the area outside the wholesaler's city. For drivers of oil trucks, the weekly hours must be averaged over a 12-month period for the purposes of determining overtime pay premiums.

In all other provinces, truck drivers are covered by the general hours of work provisions. This consistent approach is important because it suggests that the trucking industry can function under normal worktime practices. Ontario is a special case in part because it is unusual to impose maximum-hours regulations at all. Even with respect to overtime premiums, however, which are required in all jurisdictions, Ontario is unusual (but not alone) in having the trigger apply later for trucking than for other industries.

Hours and Overtime

Transportation workers have the highest incidence of long hours and the highest average weekly hours of all occupations in Ontario. As illustrated in the Phase I Report of the Task Force, in 1985 the proportion of the workforce averaging over 40, 44 and 48 hours in transportation was, respectively, 40.8 per cent, 34.5 per cent, and 25.2 per cent, compared with an average in all occupations of 22.6 per cent, 17.8 per cent, and 11.4 per cent. In other words, the incidence of long hours among transportation workers was about twice the average. This led to their having the highest average weekly hours, 41.6, compared with the average of 36.9 across all occupations.

Because in the overall workforce the number of transportation workers does not account for a significant percentage, it does not represent a large portion of all the long hours worked. Specifically, transportation workers accounted for 6.1 per cent of all hours over 40 per week, 6.6 per cent of all hours over 44, and 7.5 per cent of all hours over 48. Their disproportionate share of long hours is highlighted, however, when these figures are contrasted against the fact that transportation workers account for only about 3.4 per cent of all hours worked (with their share of long hours being about twice that proportion).

Direct evidence is not available on the extent to which transportation workers receive an overtime premium for their long hours. The special overtime provisions requiring that the overtime premium not be triggered until after 50 hours per week in local cartage and 60 in highway transport suggest that premiums mandated by legislation would not be very common. In addition, industry spokespersons indicated that mileage payments or payment per trip, which are common, would mitigate against hourly overtime premiums. In some cases where long hours are anticipated overtime pay is calculated in the trip rate.

Drivers in the not-for-hire private fleets of companies are, however, likely to receive an overtime premium, at least after the legislated 44 hours. Also, about one-third of the trucking employees in Ontario are unionized, most of them members of the Teamsters union. As indicated in Swimmer, Gunderson, and Hyatt (1987, Table 6), approximately 77 per cent of Teamster members have scheduled daily hours of 8 or less, after which an overtime premium of time-and-one-half (sometimes becoming double-time) applies. This is fairly typical of the unionized sector. Eighty-seven per cent of the Teamster contracts also provide for the right to refuse overtime, which is considerably higher than the average of 50 per cent in all collective agreements.

Attitudes to Work Time Practices

Employer Attitudes

Employers in the trucking industry have expressed concern that any further regulations of their worktime practices would simply add to their extensive problems associated with fuel and insurance cost increases, driver shortages, and impending deregulation. Most support the existing legislative arrangements on hours of work and overtime, although representatives of private not-for-hire carriers expressed concern that they were unfairly treated relative to the for-hire carriers. Many employers also expressed concern that there may be a shift to owner/operators as a way of avoiding more stringent regulations. There was also concern over competition from jurisdictions that may have requirements less stringent than Ontario's and that can operate in Ontario under the less strict requirements of the home jurisdiction.

Employee Attitudes

Although comprehensive survey evidence on employee attitudes toward worktime practices in the trucking industry is not available, it does not appear such attitudes are different from workers in other sectors. Many workers want the long hours in order to earn the additional income, and in trucking workers appear to regard long hours as a natural byproduct of the job. There was some concern expressed about the fact that overtime requirements are quite different across sectors — nonexistent in many, after 60 hours for highway transport, after 50 hours for local cartage, after 44 hours for not-for-hire private carriers, and usually after 40 hours in the unionized sector.

Ministry of Transportation and Communications (MTC)

In conjunction with a national task force, the MTC is developing a national safety code for the trucking in-

dustry. The purpose of that code would be to promote highway safety; it would not have the additional explicit objective of providing fair employment standards. In the trucking area the safety objectives would be pursued through the national safety code, and the other employment related objectives would be pursued through conventional employment standards. As is standard practice with potentially overlapping legislation, when the regulations differ, presumably the most stringent would apply.

Although highway safety would be the sole objective of a national safety code, that objective would be pursued in a fashion that would provide appropriate harmonization across the various jurisdictions and between Canada and the United States, the United States already having such a code. It would also provide more effective enforcement than employment standards since it could involve on-highway enforcement of driver hours.

Basically, the national safety code would take over the function of setting maximum hours, leaving other worktime practices, such as the overtime premium and paid holidays and vacations, to be dealt with through employment standards legislation. This designation should create no conflict since, in all likelihood, the maximum hours would be more stringent under the safety code than under employment standards. This difference seems appropriate since the rationale for restricting long hours of work appears more convincing and of more social importance when it pertains to public safety than when it pertains to worksharing or minimal standards; that is, more stringent standards seem appropriate in this area, given the additional objective of protecting the health and safety of the general public.

Having the maximum-hours regulations set out under a national safety code seems appropriate because it would foster harmonization across jurisdictions, facilitate enforcement, cover owner/operators, and reduce the confusion over who is covered and by what regulations. Also, it would foster safety objectives because transportation officials are more likely to have better expertise than labour officials with respect to the effect of long hours on safety. The code could lead to regulations that are more complex than usual maximium-hours provisions, because in the trucking industry the safety concerns arise largely out of the interraction with the public, who also share the worksite (i.e., the roads). Thus, the maximum hours allowed may depend upon rest periods or the type of highway or vehicle, or they may even involve the time of day or the qualifications of the driver. As is generally the case with health and safety issues, the relationship between worktime practices and health and safety is sufficiently complex to merit that aspect being handled by health and safety rather than hours-of-work legislation. This is even more true with the transportation sector, since the health and safety of not only the workforce but also the general public are involved.

Although the maximum-hours provisions in trucking can best be handled through a national safety code, and the overtime pay provisions through conventional employment standards, the two are interrelated. That is, higher overtime premiums or an earlier trigger after which they apply could reduce the use of long hours, thereby facilitating the safety objectives. Thus, employment standards issues can have indirect effects beyond the workforce to which they directly apply. Nevertheless, those indirect effects reinforce the basic purposes of a national safety code; hence, such a code should be complementary to, not in conflict with, employment standards.

Pros and Cons of Regulating Hours

Clearly, the trucking industry has numerous special characteristics that have implications for its worktime practices. Trucking is also an industry that is currently undergoing dramatic structural changes. Nevertheless, in most other jurisdictions trucking is treated like other industries with respect to the regulation of worktime practices. As well, the current practice in Ontario gives rise to a bewildering array of different regulations, making it difficult for employers to know their responsibilities and employees their rights.

The maximum-hours issue likely will be taken care of by an impending national safety code designed to protect public safety. That legislation should provide a desired level of uniformity, enforcement, coverage of owner/operators, certainty with respect to general coverage, and protection of the general public as well as employees. In that vein, the Ontario Employment Standards Act could be modified to match those standards, simply to ensure complete coverage.

Overtime pay, which will remain the prerogative of employment standards, could be made more uniform than it is under the current practice, which mandates an overtime premium after 60 hours in highways, 50 hours in local cartage, and 44 hours for nondrivers and the not-for-hire private fleets of companies. (If the recommendations of Phase I of this Task Force are followed, then the overtime premium would apply after 40 hours per week, and this trigger would apply to nondrivers and the not-for-hire private carriers). In trying to reduce the number of different overtime triggers, one should remember that most jurisdictions do not differentiate between the for-hire common carriers and the not-for-hire private carriers, and most do not distinguish between trucking and general overtime pay regulations. Following that format would imply a time-and-one-half overtime premium after 40 hours (assuming that Phase I recommendations are adopted). Although this may be a laudable long-term objective, it likely would create significant disruption in the short run, especially in highway transport where a 60-hour trigger now prevails.

Although a lower overtime trigger may seem unduly disruptive to sectors in trucking that now have a substantially higher trigger, there may be factors at work that would mitigate against such a disruption. First, the lower triggers are common in collective

agreements in trucking and in other provinces where trucking is treated like other industries. Second, the industry is undergoing dramatic changes and, hence, the new entrants will be entering the relevant sectors with the new regulations in mind. Third, if the previous level of earnings for drivers was acceptable for their required worktime, then they may well accept lower rates of increase in their wages for their standard workweek, given the substantial increase they would be receiving in overtime pay. Fourth, the more attractive pay package may help alleviate some of the current shortage of drivers. Although these factors are unlikely to offset fully the disruptive effect of a lower overtime trigger in those sectors with the higher trigger, they at least may mitigate against that disruption.

SUMMARY

- *The trucking industry has numerous characteristics that have important implications for worktime practices and their regulation.*
- *It has a complex and diverse structure with respect to type of carrier (for-hire, not-for-hire private fleets of companies, independent owner/operators, and leasing firms); geographic boundary and, hence, jurisdiction (local, intercity, interprovincial, international); and goods handled (e.g., freight, agricultural goods, bulk material). Often there are different regulations within each dimension.*
- *This complex structure implies a diversity of worktime practices, confusion over coverage, the opportunity to change jurisdictions or even to become an owner/operator to evade coverage, and a mixture of small and large businesses.*
- *Trucking is also subject to numerous constraints pertaining to the weather, road conditions, the worktime practices of its customers (increasingly involving just-in-time delivery), and the fact that there tends to be only one driver per vehicle and that this driver is often far from home base.*
- *Deregulation has led to a decreased use of not-for-hire private carriers of companies, additional subcontracting, use of owner/operators, a consolidation of the large common for-hire carriers into fewer firms but with a larger market share, fiercely competitive practices, and deunionization. All this has led to less scope for hours-of-work regulation because owner/operators are not covered, because there is less protection from collective agreements, and because of more resistance to further regulation.*
- *Trucking also involves a greater need for emphasis on the health and safety aspects, since it involves the health and safety not only of the workforce (i.e., drivers) but also of the general public that shares the worksite (i.e., the roads).*
- *Because of the diverse and complex structure of the industry, it is difficult to present a precise picture of the number of employees involved in trucking. However, there appear to be about 180,000 drivers in Ontario, 40 per cent in the for-hire sector and 60 per cent in the not-for-hire private fleets of companies or in leasing companies. About one-third of employees in the trucking industry are unionized, and the average annual earnings of drivers is about $28,000.*
- *Most drivers are subject to a maximum workweek of 60 hours. Some may have no maximum if employed in sectors like agriculture, or if they are independent operators. By way of comparison, taxi drivers have no maximum hours, and public and private transit drivers have a maximum of 50 hours.*
- *Special overtime provisions of time-and-one-half after 50 hours exist for local cartage, and after 60 hours for highway transport. Nondriving employees and drivers in the for-hire private fleets of companies are covered under the usual provision of time-and-one-half after 44 hours.*
- *The federal jurisdiction is fairly similar except that it also has a daily maximum of 10 hours of driving time and 15 of total-duty time. As well, city drivers receive the overtime premium after 9 hours per day and 45 per week, versus 50 hours per week in Ontario. Both jurisdictions provide additional permits to exceed the maximum hours. The federal jurisdiction does not make a distinction between for-hire common carriers and the not-for-hire private fleets of companies.*
- *Although U.S. employment standards legislation does not have maximum hours for any workers, it does require a time-and-one-half overtime premium after 40 hours per week. However, transportation employees are exempt from the overtime provisions. They are subject to maximum hours through safety regulations, which specify maximum hours of 10 per day and 60 per week for driving time and 15 per day and 60 per week for total-duty time. No distinction is made between for-hire common carriers and not-for-hire private fleets of companies.*
- *Among the Canadian provinces, only Alberta and Saskatchewan have special overtime pay provisions for trucking, but even they apply only to a segment of that industry. For much of the trucking industry in those jurisdictions, and for all of it in the other provinces, the normal maximum-hours and overtime rules apply to trucking.*
- *In Ontario, among occupational groups, transportation workers have the highest incidence of long hours and the longest average workweek. Overtime premiums are not likely to be common, except for the not-for-hire private fleets of companies (where the legislative trigger of 44 hours applies) and for unionized employees (where 40 hours is the common trigger).*
- *Employers support the status quo on hours regulations and are concerned with further restrictions, given the problems of fuel and insurance cost increases, driver shortages, and deregulation. The not-for-hire private carriers of companies expressed*

concern about their lack of special privileges relative to the for-hire carriers, and all employers were concerned about the absence of coverage of owner/operators.

- *Employees also seem reasonably content, often wanting the long hours in order to earn additional income, although there is some concern over the different hours after which overtime premiums apply, if they apply at all.*
- *Currently, a national safety code is being developed for trucking, and this will establish maximum hours for the purposes of public safety. This arrangement seems sensible since it will foster harmonization across jurisdictions, facilitate enforcement, cover owner/operators, reduce confusion over coverage in general, and foster safety objectives by involving officials who are familiar with those aspects of the industry.*
- *The maximum-hours issue likely will be taken care of adequately by the national safety code; hence, the Employment Standards Act could be modified to match those standards, simply to ensure complete coverage.*
- *The number of different overtime triggers after which an overtime premium must be paid could be reduced to facilitate equity and reduce the confusion over coverage.*
- *The potentially disruptive effect of that change for those sectors with a currently higher trigger could be mitigated by a number of factors: the prevalence of the lower trigger in collective agreements in trucking and in other provinces; the fact that current restructuring means that new entrants will fully consider the new regulations; the fact that compensation for the standard workweek may change; and the fact that the more attractive pay package may help alleviate the current shortage of drivers.*

CHAPTER 6
Construction

Construction, like trucking, does not involve controversial issues related to disadvantaged workers, familial relationships, or visa workers — issues that complicate provisions for farm workers and domestics. Nevertheless, construction has always posed special issues for labour relations and for worktime provisions under the Employment Standards Act. In outlining the worktime issues related to construction, this chapter draws extensively on a background report prepared for the Task Force by Joseph Rose, *Construction Workers and Worktime Provisions of Ontario's Employment Standards Act.*

Nature of Industry and Workforce

The construction industry has numerous characteristics that have implications for the industry's worktime practices and, hence, for the regulation of those practices.

A Complex, Diverse Structure

Construction has a complex and diverse structure. Although there are no clear dividing lines, for purposes of labour relations the industry is often divided into seven sectors: industrial, commercial, and institutional; residential; sewers and watermains; roads; heavy engineering; pipelines; and electrical power systems. Diversity from sector to sector exists with respect to the organization of construction firms, the degree of unionization, technological requirements, and staffing requirements. In addition to the seven sectors within the construction industry, there are numerous sectors that are indirectly related to the industry, including those that supply construction materials such as concrete. These are not categorized as part of construction, and so, for our purposes, they are not included in the focus of this analysis.

There is also great diversity with respect to types of employees, both across and within sectors. Specifically, the construction labour force consists of more than 14 crafts and many more subtrades.

Diversity also characterizes the demand conditions faced by the construction industry, both over time and across regions. It is an extremely volatile industry and is heavily influenced by such factors as business cycles, interest and mortgage rates, investment decisions, and the existence of mega-projects. In many situations, the industry is subject to seasonal conditions, which, in Canada, can imply a short season for completing projects.

Although construction is heavily influenced by the state of the economy, it is also sufficiently important to have a substantial effect on the economy. Construction represents 13 per cent of gross domestic product, and numerous other industries suppliers to that sector.

This diversity in construction implies that different worktime practices may be appropriate for different sectors or groups of employees. The volatility leads to situations whereby workers often want to work long hours to maximize their income because of considerable uncertainty over such work in the future.

Nonfixed Worksite

The construction industry usually is characterized by a nonfixed work site where employees often are temporarily employed on particular projects. Employment is often irregular and intermittent, leading to an employment relationship that lacks the permanency found in most sectors.

In such circumstances, construction workers are often interested in working long hours to maximize their income from a particular project because of some uncertainty over when the next project may begin. Vacation time may be less important an issue than pay because there are often long periods between projects, as well as seasonal unemployment. The monitoring of worktime practices also may be difficult in such nonfixed worksites. Moonlighting could become prominent if hours were restricted, given the ease of working on other projects.

Small, Competitive Firms

The construction industry is characterized by numerous small firms, with ease of entry into the industry and highly competitive bidding practices. As is the case in most small firms, informal working arrangements often exist. Because, the construction industry is highly unionized, a reasonable degree of protection for worktime practices is ensured.

Construction is also an industry that is highly dependent upon government contracts — about 31 per cent of the value of construction work comes from

public funds. The government portion of roadbuilding is about 90 per cent (mainly provincial); for sewers and watermains, the figure is 62 per cent (mainly municipal).

Worktime Practices under Employment Standards

Current Ontario Practice

With respect to worktime provisions under the Employment Standards Act, the construction industry is given special treatment in two ways. First, construction workers are exempt from the maximum-hours provision of 8 per day and 48 per week. This is basically an occupational exemption, applying to construction workers and not to office employees or other nonconstruction workers in the construction industry. At approximately 178,000 employees, construction constitutes the largest group of employees exempt from the maximum-hours provision, and in fact constitutes about 20 per cent of those who are so exempt (Phase I Report, Table 4.6). In addition, construction workers who receive 7 per cent or more of their wages for vacation pay or holiday pay are exempt from the paid public holiday provisions.

The second main area of special treatment pertains to the normal requirement for a time-and-one-half overtime premium after 44 hours. In the construction industry, two sectors — roadbuilding and sewer and watermain construction — have special overtime provisions under Regulation 285, section 16 (roadbuilding), and Regulation 285, section 17(5) (sewer and watermain construction). The levels after which overtime applies are 55 hours in roadbuilding involving streets, highways, and parking lots; 50 hours in roadbuilding involving bridges, tunnels, and retaining walls; and 50 hours in sewer and watermain construction. In the roadbuilding sector there is also an averaging provision whereby employees working fewer than the 55 or 50 hours will have their shortfall in hours (to a maximum of 22 hours) carried over to the calendar week immediately following, and be paid only the straight-time rate for these hours. In other words, in the building of streets, highways, and parking lots, employees could work up to 77 hours in a week (55 hours of their standard workweek plus up to 22 hours from the shortfall of their previous week) without receiving overtime.

These special overtime provisions in the construction industry are part of the special overtime provisions granted under Regulation 285, sections 16 and 17. Other industries or groups for which this special overtime trigger is granted are local cartage (50 hours), highway transport (60 hours), seasonal workers in hotels, motels, restaurants, etc., with room and board (50 hours), and seasonal fresh fruit and vegetable processing (50 hours).

Other Legislation Regulating Hours

Hours of work in construction are also regulated by other statutes. Specifically, the federal Fair Wages and Hours of Labour Act and the Ontario Fair Wage Program establish schedules for wages and hours on construction projects financed or subsidized by the federal and Ontario governments, respectively. The rationale for such control was to ensure that government contracts did not undermine local wages and working conditions; hence, the wages and hours in such government contracts were to be based upon prevailing conditions.

The federal schedules are based on prevailing conditions established under collective agreements. Standard hours are defined as 8 per day and 40 per week, after which an overtime premium of at least time-and-one-half must be paid.

The Ontario schedules are established in a 1965 Order-in-Council (OC-166/65) based upon collective agreements and area wage surveys. In general, construction standard hours are set at 8 per day and 44 per week, but these hours may be exceeded even in non-emergency situations if a time-and-one-half premium is paid. Schedules for roadbuilding and sewers and watermains mirror collective agreement provisions and regulations in the Act; that is, they specify an overtime premium of at least time-and-one-half after 50 or 55 hours in a week, depending upon the sector.

In addition to being regulated by the Employment Standards Act and the schedules of federal or Ontario government contracts legislation, hours of work in construction may be affected by municipal regulations prohibiting noisy work during certain hours of the day, for example, between 11:00 p.m. and 7:00 a.m. This restriction could inhibit an employer from scheduling multiple shifts as an alternative to overtime, although even in this example two 8-hour shifts (7:00 a.m. to 3:00 p.m., and 3:00 p.m. to 11:00 a.m.) are possible.

Table 6.1 summarizes the various worktime provisions for the various sectors of construction as they currently exist in the Employment Standards Act. Federal schedules under the Federal Fair Wages and Hours of Labour Act are based upon collective agreements, which suggests that overtime premiums of time-and-one-half after 40 hours per week are common practice in collective agreements in construction in Ontario today. Ontario schedules under the Ontario Fair Wage Program are based upon prevailing community conditions (which include those established by collective agreements), suggesting that time-and-one-half after 8 hours per day or 44 hours per week are common practice, including in the nonunion sector. In fact, payment of a premium after 8 hours per day and 40 hours per week is common in both the industrial, commercial, institutional and residential segments of the industry.

Rationales for Special Treatment

The rationales for the special treatment of construction relate to the special characteristics of the industry. As noted, the short seasons and volatile nature of demand in the industry make it such that long hours may be required while the work is available. Time-off may be best taken between projects rather than

Table 6.1
Current Worktime Coverage of Construction Under The Employment Standards Act, Ontario, 1987

Sector	Maximum Hours	Overtime Premium	Paid Holidays	Paid Vacation
General construction	exempt	1.5 after 44	covered	covered
Roadbuilding (streets, highways, parking lots)	exempt	1.5 after 55[a]	covered	covered
Roadbuilding (bridges, tunnels, retaining walls)	exempt	1.5 after 50	covered	covered
Sewers and watermains	exempt	1.5 after 50	covered	covered

[a] Subject to averaging provisions.

during a project, especially because, in areas such as roadbuilding, considerable inconvenience to the public may be involved if a project is not completed. Workers may well want to work long hours to maximize their income at a given project, taking time off in the off-season or between projects. The nonfixed nature of the worksite also makes monitoring of worktime practices difficult and enables workers to moonlight easily on other projects, should hours be restricted. In many circumstances, adding more workers to a jobsite is not feasible, given the physical confines of the site, and multiple shifts may not be practical, especially if municipal by-laws control the hours at which the work can be done. Some tasks, such as concrete pours, require a continuous operation once they are started.

Although many of these rationales apply to most sectors of construction, specific rationales are more prominent in particular sectors. Roadbuilding, for example, is particularly sensitive to weather conditions. The longer hours allowed in that sector by the Act reflecte the prevailing practice in collective agreements; that is, collective agreements in roadbuilding and sewers and watermains have typically specified that the overtime premium of time-and-one-half does not have to apply until after 50 or 55 hours (rather than the conventional 40 hours), and this prevailing practice was simply extended to the legislation.

Lastly, the special treatment for roadbuilding and sewers and watermains appears to have been rationalized in part on the basis of keeping costs down for the major clients — provincial and municipal governments. If that is truly the case, then this rationale does not seem to be socially acceptable to society. That is, although it is laudable for governments to try to keep costs down, it is not acceptable for them to do so by exempting themselves from regulations or standards that they are imposing on other employers. Governments should be prepared at least to live with those standards that they are imposing on others. In fact, there may be a legitimate role for governments to set even more stringent standards for themselves, so as to act as model employers. Of course, that proposition could be legitimately debated by those who feel it is a waste of taxpayers' money for governments to engage in unnecessarily generous employment practices. What seems beyond debate, however, is that governments should be prepared to abide by standards they set for others.

Practices in Other Jurisdictions

Most other Canadian jurisdictions also have some special provisions for worktime practices in construction. In making comparisons among jurisdictions, it must be remembered, however, that in addition to Ontario, only two jurisdictions have maximum-hours legislation. The federal jurisdiction has a maximum of 48 hours per week and Alberta has a maximum of 12 hours per day, compared with Ontario's more stringent maximums of 8 hours per day and 48 per week. (Newfoundland also has a daily maximum, but it is at 16 hours per day.) Having no maximum-hours provisions, the other jurisdictions, of course, have no need to deal with special treatment for construction on that aspect.

As indicated in Table 6.2, most other jurisdictions, however, do have special overtime triggers for construction, or they exempt certain construction sectors from the legislation. In Alberta, for example, highway and railway construction are exempt from the legislation, as is the case with road construction workers in Saskatchewan. In Manitoba, five separate schedules exist for different sectors of construction, in some cases with higher triggers, such as 50 hours in heavy construction. Quebec has a daily trigger of 10 hours and a weekly trigger of 50 hours for roads and 45 hours for sewers and watermains, compared with the province's regular weekly trigger of 44 hours. In New Brunswick, Crown construction work involving bridges, roads, culverts, and drainage construction

Table 6.2

Special Provisions for Construction, Various Jurisdictions, 1987

	Regular Provisions			
Jurisdiction	**Maximum Hours**	**Overtime Premium**	**Overtime Trigger[a]**	**Special Provisions for Construction**
Federal	48/week	1.5 regular	8 & 40	none
British Columbia	none	1.5[b] regular	8 & 40	none
Alberta	12/day	1.5 regular	8 & 40	highway & railway exempt
Saskatchewan	none	1.5 regular	8 & 40	road construction exempt
Manitoba	none	1.5 regular	8 & 40	50 in heavy construction? others?
Ontario	8/day 48/week	1.5 regular	44	-construction exempt from maximum -roadbuilding,[c] 55 or 50 -sewers & watermains, 50
Quebec	none	1.5 regular	44	-10 & 50 for roads -10 & 45 for sewers & watermains
New Brunswick	none	1.5 minimum	44	Crown bridges, roads, culverts, & drainage, 1.5 regular after 50
Prince Edward Island	none	1.5 minimum	48	none
Nova Scotia	none	1.5 minimum	48	averaging in road construction[d]
Newfoundland	16/day[e]	1.5 minimum	44	none

[a] First figure refers to daily and second to weekly hours; otherwise, weekly hours.
[b] 2.0 after 11 per day or 48 per week.
[c] 55 in streets, highways, parking lots; 50 in bridges, tunnels, retaining walls.
[d] Overtime applies to all hours in excess of 96 in a 2-week period.
[e] Also, 8 & 40 in retail and wholesale shops.

have an overtime premium of 1.5 times the *regular* wage after 50 hours, as opposed to the general industry requirement (including building construction) of 1.5 times the *minimum* wage after 44 hours. Nova Scotia allows averaging by requiring overtime after 96 hours in a two-week period, compared with the regular trigger of 44 hours.

Although the special provisions generally provide leniency for the construction industry, in certain cases the special provisions are more stringent. For example, Quebec adds a daily trigger of 10 hours for roads, sewers, and watermains, even though there is no daily trigger for the regular workforce. The one-hour difference in the weekly trigger between sewers and watermains at 45 and the general workforce at 44 seems so inconsequential as not to merit special treatment. Although New Brunswick provides a more limited trigger of 50 hours for much of Crown construction, it does require ainsert table 2higher overtime premium based on the regular wage and not the minimum wage. An overtime premium of 1.5 times the minimum wage is used for the regular workforce. In many ways it is difficult to understand these more stringent aspects within what is otherwise more lenient treatment for construction, unless they simply reflect prevailing practice.

Although most jurisdictions give special treatment to at least some sectors of construction, Ontario seems particularly lenient in exempting the whole industry from the maximum-hours provisions and in providing 50- or 55- hour triggers to substantial sectors and in not adding such further requirements as daily triggers. It is also noteworthy that although construction is often given special treatment, this is not always the case. In the federal jurisdiction, British Columbia, Prince Edward Island and Newfoundland construction workers are treated no differently from other workers.

The ability of the construction industry to function under the regular provision of employment standards is best illustrated in the United States. In that country an overtime premium of time-and-one-half after 40 hours is required, and it includes the construction industry.

In Ontario, regular treatment for construction basically means that an overtime premium would have to be paid for an additional 6 hours per week for workers on sewers and watermains and bridges, tunnels, or retaining walls (the difference between the special trigger of 50 and the regular trigger of 44) if such long hours are worked. At an overtime premium of 1.5, this implies an additional cost of the equivalent of 3 hours of wages. Based on a 50- hour week, this is a 6 per cent cost increase, assuming that such overtime is worked. For streets, highways, and parking lots, the cost increase would be 11 per cent, given the higher trigger of 55 hours.

Hours and Overtime

Given the special conditions of construction and its more lenient treatment with respect to maximum hours and the overtime trigger, it is not surprising that in Ontario the construction industry is second only to agriculture in the proportion of its workforce that works long hours. In 1985, 31.7 per cent of construction workers worked over 40 hours weekly, 26.7 per cent over 44 hours, and 18.7 per cent over 48 hours — compared with the comparable all-industry figures of 22.6, 17.8; and 11.4 per cent. Because it is not a large sector, however, construction accounts for only approximately 7 to 8 per cent of all long hours worked.

Because of the long standard workweek common in construction, the hours that are categorized as "overtime or extra hours" worked are fairly similar in construction to the average of all industries. Specifically, about 11.7 per cent of construction workers work overtime or extra hours for an average duration of 9.0 hours per week. Averaging over the entire construction workforce, including those who work no overtime, produces an average of 1.05 hours of overtime or extra hours per person. These figures are fairly similar to the respective all-industry averages of 12.9 per cent, 8.3 hours, and 1.07 hours.

Between 1983 and 1985, average weekly overtime hours in construction have increased by slightly more than 40 per cent, compared with an average increase of 14 per cent for all industries. Although overtime appears to be increasing in most sectors, the increase is particularly substantial in construction, likely reflecting the current construction boom.

Collective Bargaining

Worktime Provisions

Given the predominance of collective bargaining in construction, it is particularly instructive to examine the worktime provisions that prevail in collective agreements in that sector. As summarized in Table 6.3, there is considerable diversity across sectors, with provisions for long hours being a common feature in the road and the sewer and watermain sectors.

More specifically, most collective agreements in the industrial, commercial, and institutional and the residential sectors of construction specify a standard workday of 8 hours and workweek of 40 hours, after which an overtime premium applies. However, about 30 per cent of the cases in the industrial, commercial, and institutional sector specify a standard workweek of less than 40 hours, typically four 8-hour days and one 4-hour day or five 7.5 hour days. In contrast, about 20 per cent of the cases in residential construction specify a standard workweek of more than 40 hours; for example, five 8.5-hour days or four 9-hour days and one 8-hour day.

In the sewer and watermain and the road sectors, daily and weekly hours are typically much longer than in the other sectors. The most common arrangement involves a standard workday of 10 hours (often 12), and a standard workweek of 50 hours (often more).

With respect to the overtime premium, double time prevails in almost 60 per cent of the cases in the industrial, commercial, and institutional sector. In

Table 6.3
Standard Workdays and Workweeks, Contained in Collective Agreements, Various Construction Sectors, Ontario, 1983

Sector	Typical Standard Workday and Workweek	Overtime Premium
Industrial, commercial, and institutional	8/day, 40/week; but many shorter	2.0
Residential	8/day, 40/week; but many longer	1.5
Sewer and watermain	10/day, 50/week; but many longer	1.5
Road	10/day, 50/week; but many longer	1.5
Pipeline	8/day, 40 week	1.5

Source: Extracted from Rose (1987).

that sector, double time is almost universal for weekend or holiday work, as is commonly the case in the other sectors (except for Saturdays in the sewer and watermain and the road sectors). Otherwise, the premium of time-and-one-half is most common.

In the pipeline sector, there is a single collective agreement setting a standard workday of 8 hours and workweek of 40 hours, after which an overtime premium of time-and-one-half is paid (double time after 10 hours per day and on Sundays and holidays). Since the normal workweek consists of six 10-hour shifts (Monday to Saturday), approximately one-third of the hours worked in the pipeline sector consist of regularly scheduled overtime.

Clearly, the hours-of-work and overtime provisions that prevail in the unionized sectors of construction are influential in setting the pattern for the worktime standards for those sectors in the Employment Standards Act. Although the legislative standards tend to be less generous, they follow the same general pattern as those in collective bargaining, with a longer standard workweek for sewers and watermains and, especially, for roads. Also, although the legislative standards tend to be more lenient for employers, relative to the practices under collective bargaining, the differences are not significant for sewers and watermains and roadbuilding (bridges, tunnels and retaining walls) where time-and-one-half after 50 hours per week prevails both under collective bargaining and under legislation. This comparison suggests that reducing the overtime trigger to below its current level of 50, which is legislated for sewers and watermains and for roadbuilding (bridges, tunnels, and retaining walls), would make the legislation more stringent than the practice that prevails under collective bargaining.

Grievance Arbitration

Grievance-arbitration cases over issues pertaining to hours of work and overtime appear to be extremely rare in construction. The most common issues pertain to the collection of wages and benefits covered by the collective agreement. This situation reflects the fact that the agreements themselves usually are fairly straightforward in the area of worktime scheduling, typically specifying only the standard workday and workweek and the overtime premium. The agreements rarely deal with issues such as the right to refuse overtime, with requirements for the allocation of overtime, or with restrictions on overtime if there are layoffs or worksharing arrangements. Because the contracts tend to be simple, usually specifying only the standard worktime and the overtime premium, few disputes arise over how the contract is to be interpreted. Given the casual, nonpermanent nature of most of the construction jobs, workers tend to want their pay, of course, but are less concerned about worktime practices.

Attitudes to Long Hours

Employer Attitudes

Employers in the construction industry who were interviewed were almost universally in favour of maintaining the status quo. They felt that the special conditions in construction necessitated long hours during the often short season or life of a project. Hence, they were adamant that exemptions from maximum hours were still necessary, and that requirements to pay overtime premiums at an earlier trigger would be unduly costly. Even if they could exceed the maximum hours through permits, they were concerned about excessive regulatory costs from delays, record-keeping, and administrative costs. Employers also felt that restricting the hours of work of existing employees would not create new jobs or lead to the hiring of new employees.

With respect to the different mechanisms for regulating long hours, the employers' strongest aversion was to maximum-hours restrictions. They also opposed higher overtime premiums or earlier triggers after which the premium applies. However, except for employers in the sewer and watermain and the road sectors, most could tolerate an earlier trigger, provided that maximum hours were not imposed. The abso-

lute prohibition on working long hours obviously is more disruptive than a well-defined penalty for doing so. Employers of unionized workers were also concerned that monitoring of the legislation would be much more pronounced in the unionized sector than in the small firms of the nonunion sector, the latter group often having extremely informal practices.

Union Leader Attitudes

Not surprisingly, the attitudes of union leaders are often quite different from those of employers with respect to hours-of-work issues. The union leaders interviewed attached considerable importance to being involved in any process whereby hours of work are regulated. This involvement excluded the need to have a permit to work long hours, the right of unions to make representation if permits were to be requested, and the right to refuse overtime. Union leaders also felt that the standard hours should be reduced to 40 per week, and that the overtime premium of time-and-one-half should apply at that point. Union leaders preferred regulations through maximum hours and permits as opposed to a simple overtime premium after certain standard hours. Although the union leaders generally approved of higher overtime premiums and earlier triggers, there was some concern that this arrangement would excessively encourage workers to want the overtime work. Also, although union leaders tended to favour restrictions on hours of work as a means of creating jobs and sharing the available work, they acknowledged that the job creation may be limited because extra shifts are not always practical and many trades are in short supply.

The attitude of the union leaders differed not only from that of employers but also often from that of the rank-and-file. Understandably, the rank-and-file often want to work the long hours and overtime, especially because of the short season and the short life of many projects. Also, as discussed earlier, as reflected in their collective agreements and grievance arbitration, the rank and file were more interested in clear-cut arrangements to get extra pay for their long hours than in elaborate procedural mechanisms for regulating long hours and sharing the available work.

Combined Attitudes of Employers and Union Leaders

In his background report for the Task Force, Rose (1987) interviewed numerous employer and union representatives. At the end of an interview, he presented a brief questionnaire to 10 employer representatives and 4 union representatives. They were asked to rate various possible changes in the worktime provisions of the Act, ranging from most acceptable to very unacceptable.

Table 6.4 ranks the various responses in descending order from most acceptable to least acceptable. The ranking reflects the combined response of the 10 employer representatives and 4 union representatives (their separate responses were discussed previously), although it is obviously weighted more heavily toward employers. The combined response is useful because it reflects the offsetting influence of employer and union representatives (albeit weighted toward employers) and, hence, reflects the net result of their combined view. For example, a possible change may be recorded as unacceptable because both parties regarded it as such or because employers found it very unacceptable and the union leaders did not find it sufficiently acceptable to offset the employers' rating.

Overall, most changes were collectively regarded as unacceptable. The overall mean rating was 3.74, which is closest to the "unacceptable" designation. Even those items in the table that are ranked as "most acceptable" should be thought of as "least unacceptable" since they were not regarded as "acceptable." With that caveat, and recognizing the weighing in favour of employers, Table 6.4 does provide some information on the relative ranking of the possible policy options by the two parties.

The right of employees or their representatives to make submissions should a permit system be in place and the right to refuse overtime were regarded as most acceptable, basically because the employer opposition to these issues was not sufficiently strong to overcome the strong union support. Many employers (except in the sewer and watermain and the road sectors) regarded a simple overtime premium after standard working hours as acceptable, provided maximum hours were not specified; their support was sufficiently strong to overcome the union opposition. There was also some tolerance for maximum hours, provided that there were averaging provisions. The strongest opposition was towards double-time premiums, largely because the opposition of employers was sufficiently strong to overcome the mild support of union leaders.

Pros and Cons of Regulating Hours for Construction

It is difficult to judge the efficiency of restricting hours of work and overtime in construction in terms of the main rationale for such restrictions in general, those rationales being job creation, health and safety, and the provision of a minimal safety net or acceptable community standards for those with little bargaining power. To the extent that restricting hours of work leads to new jobs in any sector, it is likely to be less so in construction. Multiple shifts are often not practical, and, at least currently, skill shortages are likely to be a more severe problem than the inability of workers to find jobs in construction. As well, restrictions on hours are likely to lead to moonlighting on other jobs, given the ease of mobility across jobsites. There may, however, be some limited worksharing (job creation) potential, especially in the less skilled trades, where there are few fixed costs associated with hiring and orienting new workers.

Health and safety could be an issue, given the already hazardous conditions in the construction industry. As is so often the case, however, the relationship between long hours and health and safety is

Table 6.4
Employer and Labour Leader Attitudes[a] to Possible Changes in Act

Rank[b] (from most to least acceptable)	Possible Change in Act.
1	If maximum hours imposed and permits required, employees or their representatives should have the right to make submissions
2	Earlier right to refuse overtime
3	No maximum hours, but overtime premiums after a standard workday and workweek
4.5	Maximum hours but with averaging
4.5	Maximum hours reduced from 48 to 40
6	Overtime trigger reduced from 44 to 40
8.0	Eliminate exemptions or permits for exceeding maximum hours
8.0	Workers entitled to compensatory time-off in lieu of overtime pay
8.0	Maximum hours reduced from 48 to 44
10.5	Eliminate construction exemptions from maximum hours of 8 and 48
10.5	Increase overtime premium from 1.5 to 2.0 after 44 hours per week
12	Increase overtime premium to double time after 40 hours per week

Source: Extracted from Rose (1987, Table 3).
[a] 10 employer representatives and 4 union representatives.
[b] Numbers with a decimal point represent an equal ranking and, hence, are the average of the proposals with such an equal ranking.

complex and not well understood. Accidents certainly may result from the fatigue associated with long hours, but they also may be more prominent among new, inexperienced workers who are temporarily hired if new jobs are created by restrictions on hours and overtime. As well, increased moonlighting on unfamiliar jobs may create its own hazards. As is the case with other occupations, the health and safety issues associated with worktime practices are likely to be sufficiently complex as to be best handled through legislation on health and safety rather than hours of work.

With respect to the objective of providing a minimal safety net or acceptable community standards, it is important to recognize that construction is heavily unionized and, hence, under the protection of collective agreements. As well, those sectors that are not unionized are heavily affected by the practices in the unionized sector, or, as is the case in government contracts, they often have their wages and hours of work set through schedules that are basically influenced by prevailing community practices. Overall, then, construction workers generally are not a disadvantaged group with little bargaining power in need of the safety net of employment standards, at least with respect to worktime practices. In fact, there is the possibility that the standards would be more binding on the unionized sector since they may not be effectively enforced in the informal nonunion sector.

It is also evident that the construction industry has unique characteristics that affect its worktime practices. In particular, multiple shifts may not be practical, and the short season and short life of many projects mean that employers may need long hours to complete the jobs. Employees also may want the long hours to secure a reasonable annual income. This is particularly the case in roadbuilding and sewers and watermains, sectors that also are subject to the vagaries of the weather. The special circumstances of roads and of sewers and watermains are also illustrated by the fact that collective agreements in these sectors tend to specify a high standard workweek (typically 50 hours) before an overtime premium applies. In fact, legislating a standard workweek of below 50 hours in those sectors would tend to be more stringent than collective agreements, something unusual for employment standards. In that vein, the parties to the collective-bargaining process, and especially the employers, have emphasized that worktime practices should be left in the hands of the parties to the collective agreement, since they are most familiar with their own peculiar situations.

Overall, it appears that maximum-hours restrictions are likely to be disruptive to the particular worktime practices of the different sectors. Earlier triggers after which the overtime premium applies, although not welcomed by employers, are regarded as less disruptive.

SUMMARY

- *Construction has a number of special characteristics that affect its worktime practices and the regulation of those practices. It has a complex, diverse structure with different sectors and trades, each with its own worktime practices. In particular, the short seasons and short and uncertain life of many projects lead to employers wanting the long hours to finish the job and employees wanting the long hours to earn income while they can. The non-fixed nature of the worksite leads to an irregular employment relationship that makes monitoring difficult, moonlighting easy, and informal practices common. The informal practices are also fostered by the small size of most firms. However, construction is heavily unionized and affected by legislation setting fair wages and worktime practices in construction jobs under government contracts.*
- *Current practice under the Employment Standards Act basically exempts construction workers from the maximum-hours limits of 8 per day and 48 per week, and so exempts them from the right to refuse overtime after those hours. General construction is subject to the overtime premium of time-and-one-half after 44 hours; however, special overtime triggers are set at 55 hours in roadbuilding involving streets, highways, and parking lots; 50 hours in roadbuilding involving bridges, tunnels, and retaining walls; and 50 hours in sewer and watermain construction. Roadbuilding also has a 2 week averaging provision.*
- *Worktime schedules also exist in legislation applying to government contracts. Federal contracts require an overtime premium of 1.5 after 8 hours per day or 40 hours per week. Ontario schedules involve maximums of 8 per day and 44 per week, although these can be exceeded in emergencies. If exceeded, time-and-one-half must be paid after the maximums in general construction and after 50 or 55 hours per week in roadbuilding or sewers and watermains.*
- *Most other jurisdictions also give special treatment to construction although the patterns are not always uniform and the treatment generally not quite as lenient to employers as in Ontario. In some jurisdictions, however, and in the United States, construction workers are not given special treatment with respect to worktime practices under employment standards.*
- *Given the characteristics of construction and its special treatment under employment standards, it is second in Ontario only to agriculture in the proportion of its workforce that works long hours. In addition, the use of overtime in construction has increased substantially in recent years, likely reflecting the construction boom.*
- *Collective bargaining is prominent in construction, with substantial variation in negotiated worktime practices occurring across sectors. Standard worktime after which an overtime premium applies is typically 8 hours per day and 40 hours per week (often shorter) in the industrial, commercial, and institutional sector, and the overtime premium is often double time. The residential sector typically has the same standard worktime, but often it is longer and, like the other sectors, has a time-and-one-half overtime premium. Sewers and watermains and roadbuilding typically have a 10-hour day and 50-hour week (often longer) before the premium applies.*
- *Grievance arbitration over hours-of-work and overtime issues is not common.*
- *Employers in construction strongly favour the status quo with respect to worktime practices. They strongly oppose maximum hours and are concerned that regulation through the permit system could be costly to administer.*
- *Union leaders attach importance to being involved in the regulation of worktime practices through permits, union representation, and the right to refuse overtime. There is some concern that higher premiums could simply encourage workers to work more overtime.*
- *Collectively, between unions and management the policy proposals that meet the least opposition are union involvement in the permit request, the right to refuse overtime, and the use of overtime premiums rather than maximum limits. The most resistance is against double-time premiums.*
- *Restrictions on long hours in construction is not likely to lead to substantial job creation because of difficulties related to multiple shifts, skill shortages, and moonlighting.*
- *The relationship between long hours and health and safety is sufficiently complex to merit being handled through legislation on health and safety rather than hours of work.*
- *Overall, construction workers are relatively advantaged in terms of the protection of a collective agreement or the schedule of a government contract. Hence, the rationale to regulate worktime practices to provide a safety net or acceptable community standard is of minimal significance.*
- *Given the minimal rationale for extensive regulation of worktime practices of construction, and the special characteristics of that sector, it seems sensible to emulate the practices under collective agreements.*
- *This involves focussing on overtime premiums, and having later triggers for roads and for sewers and watermains.*
- *It should be recognized, however, that many segments of construction in other jurisdictions and in the United States function under the normal worktime practices under employment standards. Also, the special treatment of workers on roads, and sewers and watermains does not rest upon the unacceptable justification of saving provincial and municipal revenues; rather, it is because such special treatment is often recognized in other jurisdictions and, more importantly, in collective bargaining.*

CHAPTER 7

Recommendations

Introduction

The task of deciding criteria for evaluating special treatment under the hours-of-work and overtime provisions of the Employment Standards Act (the primary purpose of the Phase II Report) was in a sense made simpler by having established in Phase I a yardstick for change in those standards. The Task Force concluded in its earlier deliberations that as much as possible the number of exemptions or special treatments should be reduced. That is, a specific and strong case has to be demonstrated for an exemption or special treatment under employment standards legislation. Specifically, to the extent possible, those groups currently receiving special treatment should be brought under the general hours of work and overtime provisions of the Act.

In its Phase I Report, the Task Force recommended a new standard workweek of 40 hours after which the overtime premium must be paid, the right to refuse overtime prevails, and additional hours have to be debited from a new annual block grant of 250-hours. In addition, paid vacations should be increased to three weeks after five years of service with the same employer* and time-off in lieu of overtime pay should be allowed as an option if mutually agreed upon by the parties.

As well, the underlying community standards criteria which were adopted as a norm for recommending changes to the Employment Standards Act in Phase I are still valid and operable for the special circumstances considered in Phase II. Also, as indicated in the main body of this report, the relevant question to ask concerning exemptions or special treatment is: what distinguishes a particular category of workers (and/or their employment arrangements) so that they should not have the complete protection of the hours-of-work provisions of the Act.

As is evident in the review of the four sectors studied by the Task Force in Phase II (agriculture, domestic employment, trucking, and construction), in each case, from a public policy perspective, one issue seems to dominate. In the case of agriculture and domestic employment, the issue was a perceived lack of employee bargaining power. For construction and trucking, the concern was more of equalizing treatment among different segments within the industry. The background research also highlighted the widely varying employment practices among the four groups. Other criteria that were kept in mind were (1) the job-creation potential of bringing workers with longer hours under the (shorter-hour) framework of the Employment Standards Act, and (2) health and safety considerations.

As will become clear in the four specific cases, the Task Force considered whether or not each specific group should be brought under the Phase I framework — particularly with respect to standard hours, overtime premium pay, paid vacations, the right to refuse overtime, and time-off in lieu of overtime. Although the Task Force did not offer any specific recommendations on public holidays in Phase I, the right to have paid public holidays was an additional criterion considered in our Phase II deliberations.

The Phase II recommendations are listed under major topics, and a rationale is provided for each recommendation.

General Recommendations

1.Repeal subsection 20(1) (a) of the Employment Standards Act which provides 12 excess hours per week for specified categories of employees.

2.The Employment Standards Branch should monitor requests for permits (beyond the 250-hour block) arising from the deletion of subsection 20(1) (a) of the Act, especially with regard to maintenance workers. If experience demonstrates that there is a continuing requirement for hours in excess of the 250-hour block, the number of hours in the block grant for maintenance workers (or others) should be increased.

Subsection 20(1) (a) of the Act grants 12 excess hours per week beyond the current 48-hour maximum to eight specified categories of employees. The main question that the Task Force dealt with was whether these groups of employees, and their specific working arrangements, were sufficiently different from other groups of workers to justify that special treatment ex-

* Ms. Judith Andrew dissented from this Phase I recommendation

tending the maximum workweek from 48 hours to 60 hours. In our deliberations it became clear that the special nature of these employees was not substantially different, and, in some cases, these occupations have diminished in importance over time. Also, other occupational groups might have even stronger cases for longer hours than some or all of these eight categories of workers. Moreover, the Task Force felt that the 250-hour block of overtime after the new 40-hour standard workweek (recommended in Phase I) provided employers with sufficient flexibility for work scheduling.

The Task Force recommends that requests for permits for these occupational groups (particularly maintenance workers) beyond the 250-hour block be monitored so that if a future real need for special treatment for specific categories of workers emerges, such treatment could be considered.

3.The Employment Standards Branch should update section 19 of the Act to reflect the changing industrial composition of the Province (to a larger proportion of nonmanufacturing and service employment and, within manufacturing, to more high-technology industry) and to take into account the additional pressures on this section which are likely to emerge following the implementation of the Task Force's Phase I recommendations.

4.The information on which a decision is based to work excess hours under section 19 of the Act shall be shared with the union (or other representative of the employees) upon request.

Concerns regarding the definition of "urgent work" have been expressed. Although the definition seems oriented to manufacturing, the Task Force concluded that the expression "accident or work urgently required ... to avoid serious interference with the ordinary working of the establishment" provided a sufficient amount of flexibility to deal with most emergency situations. Moreover, officials in the Employment Standards Branch indicated that employers take advantage of this provision less often than they might, especially in terms of not having emergency hours debited from the excess hours granted under a permit. Nevertheless, if the Ministry adopts the Phase I recommendations, which include a reduced standard workweek and the 250-hour block of excess hours, it is possible that employers might turn toward the use of this section more often than in the past. If the current definition is inappropriate or insufficient, there might be more disputes in the future between employers and employees over what legally constitutes urgent work. The Task Force also sought some legal advice from the Ministry and looked at the experience in Alberta and in the federal jurisdiction, both of which have a broader definition of "urgent work." Partly on the basis of that information, the Task Force felt that the definition should be broadened.

The Task Force recommends that the Employment Standards Branch update section 19 of the Act to reflect the changing industrial composition of the Province. This updating process should not change the character of the enforcement, but would be helpful to employers who currently are not aware that emergencies effectively apply to a wider range of industries than simply manufacturing. The Task Force also recommends that any information relating to an employer's decision to work excess hours under this section of the Act should be shared with unions or other affected employees upon request.

5.The Ministry should review exceptions to and exemptions from the hours-of-work provisions of the Employment Standards Act, using the following guidelines:

- *The Review should be done by a small group within the Ministry of Labour, drawing upon the resources of other parties, as needed.*
- *Some form of public consultation should occur, eliciting input from interested parties.*
- *The original rationale for special treatment should be examined when information is available.*
- *The actual practices and experience of the exempt group should be studied, including the capability of self-regulation. The focus should be on showing why the group under consideration should be treated differently from the norm.*
- *The emphasis should be on providing uniformity of treatment, limiting exemptions, and on minimizing or eliminating special treatment.*
- *The total review should be completed within 5 years.*
- *Priority should be given to the review of industry permits.*

Obviously the Task Force touched only the tip of the iceberg with respect to reviewing groups that receive special treatment. It is clear to all of the members of the Task Force that a consistent process should be adopted that would ultimately review the status of all groups receiving special treatment relating to the hours and overtime provisions of the Employment Standards Act. Accordingly, the Task Force set out the above guidelines for a review procedure.

It is the belief of the Task Force that the review procedure could be established and managed systematically and efficiently by a small group within the Ministry of Labour. As we have stressed throughout this report, the rationale for maintaining an exemption or special status should be based on determining whether particular employees or their employment practices are sufficiently different from the norm to justify special consideration. Lack of protection of the Employment Standards Act should not be treated lightly, especially for groups having little individual bargaining power. Consequently, to the extent possible, the emphasis of this review process should be on moving toward increased uniformity of treatment, thus minimizing or limiting the number of employees who do

not receive protection because they are exempted from or provided with special status under the Employment Standards Act.

The Task Force believes that a complete review of such issues should be completed over a period not to exceed 5 years. This could be conducted in concert with the 5-year general review of hours of work issues as stated in Recommendation 22 of the Phase I Report.

6.The Ministry of Labour should consult with labour and management in those industries currently holding industry permits regarding the need for hours beyond the 250-block grant. Industry permits should be reissued as needed following the consultation process.

Currently, 26 industries have permits that enable individual employers within the designated industry to work extended hours. As described in Chapter 2, these excess hours include the permission to schedule the following: a workday of up to 10 hours, 12 excess hours per week for specified categories of employees (under subsection 21(1) (a), 100 excess hours per year for all other employees under subsection 20 (1) (b), and, in some cases, additional excess hours under subsection 20(2).

To study each of these 26 industries would have entailed resources far beyond those available to the Task Force. To recommend eliminating these permits across the board without extensive review and consultation with the affected parties would be irresponsible. In addition to the possibility of causing hardships to the affected parties, it is possible that the complete elimination of these permits would place an inordinate administrative burden on the Employment Standards Branch. Consequently, the Task Force recommends that the Ministry undertake a review of these long-standing permits, including consultation with the 26 industries regarding the justification for any special treatment beyond the Phase I recommendations. The focus should be on whether sufficient flexibility is provided within the Phase I framework, which includes a block of 250 excess hours plus the ability to schedule longer workdays with the agreement of workers.

Agriculture

7.Extend coverage of Part VII of the Act — Public Holidays — to all agricultural employees.

8.Include agriculture in the list of industries in subsection 26(5) in which the employer may require the employee to work on a public holiday and reschedule an alternative day off with pay.

9.Extend coverage of Part VIII of the Act — Vacations with Pay — to all agricultural employees.

Currently, all agricultural workers are excluded from the protection of the hours-of-work (including maximum-hours) and overtime pay provisions of the Employment Standards Act. One segment of the industry, composed of landscape gardening, mushroom growing etc. (as defined in Reg. 285, ss. 4(c)) is covered under the vacation-with-pay standards, while fruit, vegetable, and tobacco harvesters are covered by both the public holidays and vacation-with-pay standards.

In its deliberations, the Task Force reviewed the employment standards coverage of agricultural workers in other Canadian jurisdictions. As in Ontario, most other provincial governments exempt agricultural workers from maximum-hour and overtime pay standards. There is, however, less uniformity with respect to exemptions from paid vacations and public holiday provisions.

The Task Force concluded that farms have difficulty recruiting employees. In most sectors and geographic areas, there appears to be considerable competition for agricultural workers. Such competition should result in improved working conditions on the farm so that workers with requisite skill can be attracted in sufficient number. Moreover, the seasonal nature of much of the industry coupled with other environmental and biological factors makes the administration of weekly hours and overtime standards very difficult.

The Task Force took careful note of John Kinley's observation, in his background report, that paid vacations and public holidays seemed fairly common in agriculture. The Task Force felt that extending the coverage of these two parts of the Act to all agricultural employees would not place an onerous burden on employers. It was recognized that many public holidays fall during the normal busy season for farmers, providing the rationale for the amendment of subsection 26(5) to include agricultural employers. This enables the employer to require an employee to work on a public holiday and to schedule an alternative day off with pay.

Both employers and employees accept that long hours are a condition of agricultural work. Any change to the exempt status of the industry would place an unrealistic burden on many employers especially those with small operations. The Task Force is not recommending coverage with respect to the right to refuse work and the time-off-in-lieu option.

Domestics

10.Full-time live-in and live-out domestics and nannies, and full-time live-in sitters should have the right to refuse work after 50 hours per week.

11.Time-off in lieu could be taken upon mutual agreement between the employee and employer within one calendar year of being earned (rather than within 12 weeks, as in regulation 308/87).

12.The Ministry of Labour should consider changing the legislative status of companions following the completion of work by an interministerial committee that is now looking at this issue. Cost (to government) would not be seen as an acceptable argument for continued exemption from coverage.

13.The provincial government should lobby the federal government to change income tax provisions to make childcare expenses fully deductible.

Under new regulations in the Employment Standards Act, domestics are divided into two groups — (1) full-time live-in and full-time live-out domestics and nannies as well as full-time live-in sitters, and (2) sitters, companions, and part-time domestics. Under Regulation 283, live-out domestics were entitled to be paid $6.53/hour (1.5 times the minimum wage) for the hours worked beyond 44 in a particular week. Full-time live-in and live-out domestics recently received expanded protection under the Employment Standards Act (effective October 1, 1987), with coverage being offered for paid vacations and public holidays, and premium pay for work beyond 44 hours per week. In addition, time-off in lieu of overtime arrangements can be negotiated between the two parties. Moreover, employers are now required to keep records of hours worked daily and weekly by their domestic employees. The second group (sitters, companions, and part-time domestics) remains completely exempt from coverage under the Employment Stand-ards Act.

When the new regulations were introduced in the summer of 1987, the Minister specifically deferred making a change to the Employment Standards Act on the subject of maximum hours. According to his statement:

> *On one issue — maximum hours of work for domestics — we have decided to defer action for the moment. A resolution of this question will await the findings of the Task Force on Hours of Work and Overtime. The second phase of the Task Force report will deal with Domestic employment and is expected in the Fall.*

The first question the Task Force had to deal with related to the standard workweek after which overtime is payable. In other instances one might have justified moving from the 44-hour standard down to the 40-hour standard recommended in Phase I. However, because the 44-hour level was not to take effect until October 1987, and because the Task Force felt that the new regulations for domestic employees (from no overtime premium to an overtime premium after 44 hours per week) already represented a dramatic change for the workers and their employers in the household sector, the Task Force decided that the overtime premium should continue to take effect at the level of 44 hours per week.

The issue of how to handle maximum hours was more difficult. Essentially the Task Force decided to continue the formal exemption of this group from maximum hours, but to offer domestic workers the right to refuse to work after 50 hours of work in a week. It was felt that the right to refuse overtime at 50 hours, in conjunction with the Ministry's new standard workweek for domestics of 44 hours, at which point the overtime premium would apply, would accomplish several worthwhile objectives.

For many households (employers) the overtime premium should serve as an effective constraint on the hours of work they will require of their domestics. This is especially the case since the household likely will feel the cost of the time-and-one-half premium more keenly than a typical business establishment.

The right to refuse overtime at 50 hours would provide the employee with additional rights while providing the employer with sufficient time to manage a 40-hour per week job and typical commuting time. The time-off-in-lieu option at the premium rate would be retained, but under our recommendation the time-off could be taken within the following year, rather than within the following 12-week period as specified under the new regulation. The Task Force felt that being forced to work out a time-off-in-lieu arrangement within a 12-week period might be unnecessarily confining to both parties. There could be an advantage to a visa domestic who wished to take a trip abroad to be able to negotiate the lieu time over a longer period.

The main point is that the imposition of a premium rate of pay after 44 hours, together with the employee's right to refuse work after 50 hours, should impose an effective ceiling on hours. However, it would also have to provide sufficient flexibility to accommodate the main concerns of this unique employment relationship.

The Task Force was concerned that companions were not included with those domestic workers to whom coverage was extended under the new regulation. That is, it was not clear to the Task Force why companions were included with sitters and part-time domestics, rather than with full-time domestics. It could be that little is known about this particular group of employees and, hence, there is a reluctance to make changes that might (inadvertently) affect their employment status in a negative manner. Since an interministerial committee has been established to review the situation of companions, it was felt that the Minister of Labour should consider changing their status under the Employment Standards Act after reviewing the findings of that committee.

The Task Force is also concerned that pressure to maintain the exemption for companions exists because of the potential for increased costs to service agencies funded by the provincial government. This cost link is not sufficient justification for the exemption of companions from the hours-of-work and overtime part of the Act, just as it is not an acceptable rationale for employers in the private sector. The Task Force felt that it is important that the government

live up to standards that it requires of employers in the private sector. This is especially the case since many companions may themselves be low-income senior citizens who are as much in need of employment protection as any other worker.

Finally, there is an important anomaly in the treatment of the householder as employer, with regard to income tax. If householders are treated as employers for purposes of employment standards, consistency would require that they be offered the cost deductibility of employee expenses for income tax purposes that is normally available to businesses. This deductibility should raise wages, which would help alleviate one of the important problems facing all domestics. Accordingly, the Task Force recommends that the Ontario government lobby the federal government to make reasonable childcare expenses fully deductible under the Income Tax Act.

Trucking

14.Maximum hours for drivers should be set in the National Safety Act and enforced, in Ontario, by the Ministry of Transportation and Communications. The Employment Standards Act should set its standards to be compatible with those of the National Safety Act so as to ensure complete coverage.

15.Operators, and drivers and helpers in local cartage and highway transport should receive overtime premium pay after 50 hours per week; private carriers after 40 hours per week.

16.Operators, and drivers and helpers in local cartage and highway transport should have the right to refuse work after 50 hours per week. All others in the industry would be able to refuse after 40 hours per week.

17.The time-off-in-lieu provision recommended by the Task Force in Phase I should apply to all employees in the industry.

The trucking industry in Ontario is regulated by several different jurisdictions, and the industry is changing relatively quickly because of the pressures from deregulation, many of which have originated in the United States.

All segments of the trucking industry are fully covered by the public holiday and paid vacation provisions of the Act. Special treatment of employees in the industry relate to hours of work and the level at which the overtime premium is paid.

For example, under Regulation 285, the for-hire categories of local cartage and highway transport are guaranteed overtime rates of pay at different weekly hours — with drivers and helpers in local cartage receiving the time-and-one-half premium after 50 hours, and operators in highway transport having the premium apply after 60 hours per week. Another segment of the industry, private fleets run by firms whose primary business is other than truck transportation, presently have overtime paid at the same standard as other workers — at 44 hours. Finally, there are owner/operators in this industry, who are not covered by the Employment Standards Act. Currently, industry permits for highway transport and local cartage extend the maximum weekly hours for drivers to 60 per week.

In its deliberations, the Task Force was concerned with the competitive implications relating to regulatory trends in other Canadian and U.S. jurisdictions, to the whole question of public safety, and to apparent anomalies within the industry with respect to the level at which the overtime premium takes effect under the Employment Standards Act. Accordingly, the mix of recommendations is quite pragmatic. Since the maximum-hours regulations relate as much to public safety as to personal safety, the Task Force concluded that the Ontario Ministry of Transportation and Communications and the proposed federal National Safety Act were the proper mechanisms to establish maximum hours that meet public safety considerations. We understand that the Ontario government is committed to the national effort to develop a common regulation on maximum hours for the trucking industry. The Task Force recommends that the standards set in the National Safety Act be adopted in the Employment Standards Act. These standards are currently under national review.

With respect to overtime pay, all private carriers would have the premium apply at the level of 40 hours per week, as is the level for most workers. The Task Force recommends that for drivers in the highway transport segment of the industry, the premium be paid after 50 hours per week. This would make conditions consistent with those that apply to drivers and helpers in local cartage. Although a considerable gap still exists between the standard workweek for private fleets (40 hours), the Task Force felt that the comparison group for those who are private carriers is the industry in which they work (for instance, the retail sector).

Additionally, the Task Force recommends providing the right to refuse work after 40 hours for private carriers and after 50 hours for drivers (operators) in local cartage and highway transport. Under the current Employment Standards Act, local cartage and highway transport have the right to refuse work after a 48-hour week. However, the Task Force felt that it was preferable that the payment of premium pay, the right to refuse work, and the time-off-in-lieu option should all take effect at the same hourly level — consistent with the standard workweek in the relevant industry.

Construction

18.On-site workers in the roadbuilding and sewer and watermain sectors of the industry should receive premium pay for work after 50 hours per week.

19.On-site workers in the roadbuilding and sewer and watermain sectors of the industry should have the right to refuse work after 50 hours per week. All other employees in construction should have the right to refuse after 40 hours per week.

20.The time-off-in-lieu provision recommended by the Task Force in Phase I should apply to all employees in the industry.

Under present practices, the construction sector is provided with special treatment as follows:

1.Hours of work, including maximum hours. All construction workers are exempt.

2.Overtime pay. For roadbuilding (on-site workers — streets, highways, parking lots): the premium currently applies after 55 hours per week; for roadbuilding (on-site workers — bridges, tunnels, retaining walls), the premium applies after 50 hours per week; and for sewer and watermain construction, premium pay is after 50 hours per week. Essentially, full coverage is offered with respect to public holidays and paid vacations.

Construction was another case in which it was deemed difficult to limit hours of work. As in agriculture, the seasonal nature of the industry almost guarantees long and sometimes irregular hours. At a special symposium on the issue of exemptions, both labour and management representatives recommended leaving the hours-of-work exemption alone. Although generally agreeing with this stance, the Task Force nevertheless felt that some equalization of treatment within the industry was required. Accordingly, the Task Force recommends that the overtime premium apply equally to on-site employees in roadbuilding and sewer and watermain construction after 50 hours per week. (Under our Phase I recommendations, the right to refuse work is available after 40 hours for those employees who are not exempt from the hours-of-work or overtime pay sections of the Act.) Similarly, construction workers would have the right to negotiate time-off-in-lieu options at the 50-hour level.

General-construction employees currently are exempt from the hours-of-work provisions but are covered by the overtime pay part of the Act with the premium currently payable after 44 hours. Under the Task Force Phase I recommendations, they would have the overtime premium apply at the new lower 40-hour weekly standard.

Appendix A
Task Force and Its Approach

The Task Force

The Task Force on Hours of Work and Overtime was appointed on January 23, 1986, by the Minister of Labour, the Honourable William Wrye, to examine the issues of hours of work and overtime in Ontario and to make recommendations to the Ministry, primarily with respect to the relevant sections of the Employment Standards Act.

Phase II

As a result of concerns raised both at the public meetings and through the research carried out for the Task Force, it was decided that the issue of exemptions and special treatment regarding hours and overtime merited special consideration and additional review. Following extensive discussions, the Task Force requested and received an extension to examine the topic in detail.

The Task Force Members:

Chairman, Arthur Donner

Dr. Donner is an economic consultant with ARA Consultants in Toronto and an Adjunct Professor of Economics at York University. He has been writing quarterly reviews of the Canadian economy for Andras Research Capital (formerly Research Securities) for the past 13 years, and since 1983 has written a weekly economics column for the *Toronto Star*.

Dr. Donner studied economics and finance at the University of Manitoba and then the University of Pennsylvania, receiving his PhD in 1968. He has been a member of the research staff of the Federal Reserve Bank of New York and of Canada's Prices and Incomes Commission. He has served as consultant to the Privy Council Office in Ottawa, to the federal Departments of Agriculture, Communications, and the Secretary of State, and to many provincial government ministries. He has taught economics at Temple University in Philadelphia, the City University of New York, McMaster University, and the University of Toronto.

From 1971 to 1982, Dr. Donner was a contributor of "Economic Comments" to *The Globe and Mail*'s Report on Business. He is the co-author of *The Monetarist Counter-Revolution: A Critique of Canadian Monetary Policy, 1975-1979*, and the author of *Financing the Future*, both published by the Canadian Institute of Economic Policy. He has written numerous other studies in the fields of human resources economics, finance, communications policy, and macroeconomics.

Fitz. Allison

Mr. Allison, who since 1981 has been Vice-President, Industrial Relations, of Abitibi-Price Inc., has worked in the pulp and paper industry for 26 years. He has also served as Vice-President of Employee Relations with Cominco, and as a Director of Industrial Relations Consulting Services with D.K. Partners, a Vancouver-based management consulting firm. Mr. Allison has been active in numerous industry organizations and served as employer delegate to the Industrial Subcommittee of the Forest and Wood Industries of the International Labour Organization in Geneva. He has a BSc from McGill University.

Judith Andrew

Ms. Andrew is Director of Provincial Affairs, Ontario, of the Canadian Federation of Independent Business. She is responsible for the Federation's legislative action in the province, reflecting the policy directions of the CFIB's 34,000 Ontario member firms. She joined the CFIB in 1982 as the Assistant Director of Research and has also served as Associate Director of Research. Ms. Andrew has also held positions in the banking industry and the management consulting field. She has an MBA from York University.

Sam Gindin

Mr. Gindin is Assistant to the President of the Canadian Auto Workers, and has been the union's chief researcher in Canada since 1974. He has prepared major policy papers for the union in Canada and has authored numerous briefs for submission to all levels of government on such topics as the Canada-U.S. Automotive Trade Agreement, trade with other countries, the agricultural implement industry, the aerospace industry, and the automotive parts industry. Mr. Gindin has also worked as a research officer for the New Democratic Party in Manitoba and taught at the University of Prince Edward Island. He has an MA in economics from the University of Wisconsin.

Bill Stetson

Mr. Stetson has served as Vice-President (1964-1986) and Treasurer (1986), Hamilton Steelworkers Area Council. He has a background in trade unions which began in 1945 at the International Harvester Twine Mill in Hamilton. He has served as a regional representative for the Steelworkers in the Hamilton area since 1986.

The Personnel:

The Executive Coordinator, Margaret Smiley, and the Research Director, Morley Gunderson, began their work for the Task Force in February 1986. Ms. Smiley, a project manager in the Ontario Ministry of Labour, was seconded to work with the Task Force. Morley Gunderson is the Director of the Centre for Industrial Relations and Professor, Department of Economics, at the University of Toronto. The Task Force's administrative office opened in Toronto on March 5, 1986, and has been ably staffed by secretary Donna Cowan.

Specific research projects in Phase II were contracted out to the following:

Donald N. Dewees, Special Treatment Under Ontario Hours of Work and Overtime Legislation: General Issues.

John Kinley, Farm Workers and Worktime Provisions of Ontario's Employment Standards Act.

Fred Lazar, Trucking Industry and the Worktime Provisions of Ontario's Employment Standards Act

Joseph Rose, Construction Workers and Worktime Provisions of Ontario's Employment Standards Act.

Monica Townson, Domestic Workers and the Employment Standards Act.

Appendix B
Background Reports Commissioned by the Task Force – Phase I and Phase II

Phase I

Ronald G. Ehrenberg, Daniel S. Hamermesh, and Robert A. Hart: ***Proceedings of a Symposium on Hours of Work and Overtime: Labour Market Issues***

These proceedings bring together papers by three internationally known academics who have conducted research on the theoretical and econometric issues pertaining to restrictions on hours of work and overtime. The papers, which were presented at a symposium on June 26, 1986, and commented on by other experts on the topic, are: "On Overtime Hours Legislation," by Ronald G. Ehrenberg; "Overtime Hours Laws and the Demand for Labour, Workers, and Hours," by Daniel S. Hamermesh; and "Hours of Work and Overtime: Lessons from the European Experience," by Robert A. Hart. The papers point out the limitations of policies designed to reduce hours of work and overtime, as well as the limited job-creation potential from reductions in hours of work and overtime.

John Kinley: ***Current Administration of Legislated Standards on Hours of Work and Overtime***

This study outlines the current arrangements for administering Ontario's Employment Standards Act, placing special emphasis on those 196 that control time worked. The provision of information, audits of employer compliance with the standards, and investigation of alleged violations are the principal components of the Branch's enforcement program, and the study presents an overview of the day-to-day work associated with these activities. Although descriptive, this review raises a major question about the design and effective administration of legislation directed controlling hours worked.

John Kinley: ***Evolution of Legislated Standards on Hours of Work and Overtime***

This study documents key events in the development of Ontario legislation controlling hours of work: the 1884 Factories Act; the 1944 Hours of Work and Vacations with Pay Act; and the 1968 Employment Standards Act. The author discusses the legislation's shift in orientation in 1944, from "protecting" women and youths to emphasizing equitable employment conditions and job creation. His discussions and tables guide the reader through the evolution that has taken place until 1975, the year of the most recent changes.

Fred Lazar: ***Hours of Work and Overtime: U.S. Experience and Policies***

The United States, a major, proximate trading partner of Ontario, has gone through a recent public debate over the pros and cons of restricting overtime to create jobs. As well, the United States offers a multiplicity of experiences with legislation restricting the use of overtime. Although some of the lessons to be learned from U.S. experience cannot be directly transferred to the Ontario setting, they provide insight into the feasibility of certain policy options. This study, in examining the U.S. situation, looks at the Fair Labor Standards Act, reviews hearings on proposals to amend that Act, examines states' laws, and presents a discussion of policy alternatives.

Ontario Ministry of Industry, Trade and Technology: ***Hours of Work and Overtime in Small Businesses: Five Case Studies (December 1986)***

Case studies of hours of work and overtime practices in five small Ontario firms: sewer and watermain contracting, clothing manufacturing, courier and moving service, lumber and building supply and weigh scale repair and distribution. The studies include qualitative research on attitudes of owners towards overtime and data on firms and their practices. (Copies of this report are available from the Ontario Ministry of Industry, Trade and Technology.)

Frank Reid: ***Hours of Work and Overtime in Ontario: The Dimensions of the Issue***

This study, which presents evidence concerning overtime hours, long hours, and nonwage labour costs in Ontario, addresses a number of specific questions. How much overtime is being worked in the Province? Has the amount of overtime work increased over the last 10 years? Who is working overtime? Is overtime work spread evenly throughout the workforce or is it concentrated in specific occupations, industries, or demographic groups? Is overtime mainly a response to cyclical changes in economic conditions or unexpected emergencies, or is it used on a regular, ongoing basis? And, finally, has there been an increase in fringe benefit costs or other nonwage labour costs that has provided an incentive for employers to work their existing employees longer hours rather than recall employees on layoff or hire new employees?

Frank Reid: ***Hours of Work and Overtime Policies to Reduce Unemployment***

This study analyzes and advocates various worktime-reduction policies to improve both equity and economic efficiency. The most significant change discussed is providing employees with an entitlement to voluntary worktime reductions with a proportionate reduction in pay. The author examines fringe benefit costs that are fixed per employee rather than per hour, and notes that such costs bias the employer toward long hours of work and reduced employment. Other policies analyzed include reducing the standard workweek, charging for overtime permits issued under the Employment Standards Act, and increasing the statutory overtime premium.

A. Leslie Robb and Roberta Edgecombe Robb: ***The Prospects for Creating Jobs by Reducing Hours of Work in Ontario***

This study examines the theory and empirical evidence relating to reductions in both overtime and the standard workweek, with respect to their potential impact on job creation. It then builds on this information to provide some empirical estimates of the likely impacts of a number of policies: eliminating long hours; eliminating extra hours worked; eliminating overtime hours; raising the overtime premium to double time; and providing a subsidy to offset some of the costs associated with hiring new workers. The authors' illustrative calculations suggest that, in the Ontario context, such policies are of little value for creating jobs.

Roberta Edgecombe Robb and Morley Gunderson: ***Women and Overtime***

This study examines the hours-of-work and overtime issues that are of particular relevance to women. The study concludes that it is likely that women will be affected less than men by restrictions on hours and overtime because women tend to work shorter hours and less overtime. However, because the new jobs will not likely occur in female-dominated areas, women will not benefit as much as men by any job creation from reduced hours and overtime. Issues such as the right to refuse overtime are likely to be of more importance to women.

Eugene Swimmer, Morley Gunderson, and Doug Hyatt: ***Collective Bargaining, Hours of Work, and Overtime***

In light of the fact that more than half of Ontario's workforce is covered by a collective agreement, this study analyzes the role of collective bargaining in dealing with hours-of-work and overtime issues. The authors examine numerous hours-of-work and overtime provisions in major collective agreements in Ontario as of 1984. They also examine grievance-arbitration cases and conclude that overtime issues are not a major source of grievance arbitration, and that they appear to be declining in relative terms.

Peter Warrian: ***Case Studies on Overtime in Ontario***

This report includes six case studies that provide a detailed analysis of the recent hours-of-work and overtime experience in Ontario: the Hilton Works site of the Steel Company of Canada (Stelco); General Motors of Canada; the Northern Telecom plant in London, Ontario; Abitibi-Price; the Butler Metals manufacturing plant in Cambridge, Ontario; and the 3M plant in London, Ontario. The cases provide a diversity of perspectives with respect to traditional smokestack industries (steel, auto, pulp and paper); high-tech manufacturing (telecommunications); downsizing (steel); and fundamental restructuring (manufacturing).

Klaus Weiermair: ***Hours of Work and Overtime: The European Experience***

In recent years, many European countries have fol lowed a conscious policy of reducing hours of work as a form of worksharing. This issue is a much more prominent part of the policy agenda in Europe than in North America, partly because of the lack of job creation from other sources. Therefore, an examination of the European scene may be instructive in determining whether restrictions on overtime in Ontario may lead to job creation. This study examines the extent and incidence of overtime in selected countries; reviews regulations; considers overtime from the perspective of employer, employee, and union; and summarizes the ongoing debate over governmental policies toward hours restrictions and overtime reduction.

Phase II

Donald N. Dewees: ***Special Treatment Under Ontario Hours of Work and Overtime Legislation: General Issues***

This paper analyzes the exemptions, permits and special treatment that provide release from Ontario's limitations on hours of work and overtime. It appears that the special treatment occurs because the fixed limitations in the act and regulations fail to recognize the demand and need for varying working hours by employers and employees across the province. The cost of limiting the work day or workweek varies enormously from one industry to another. The desire to work long hours varies considerably from one worker to another. It follows that a policy of fixed work hours is both inefficient and impractical, will be resisted by both employers and employees, and lead to a demand for widespread and varying exemptions. Whatever the merits of hours limitations as a means of promoting worksharing, the limitations under the current system are poorly adapted to achieving this goal. A premium for overtime hours is beter suited to promoting worksharing than fixed limits on allowable working hours.

John Kinley: ***Farm Workers and Worktime Provisions of Ontario's Employment Standards Act***

The purpose of the paper is to evaluate the need for excluding most hired farm workers from the maximum hours of work, overtime pay, vacation with pay, and holidays with pay standards of Ontario's Employment Standards Act. Although statistical and other published sources are use, the paper relies heavily on information collected from twenty-one farmers and agricultural officials and, therefore is illustrative rather than a complete analysis of the matters to be considered in extending work time standards to farm workers. However, most of the interviews were undertaken with farmers and officials who are directly involved in those areas of agriculture in which th

majority of hired workers are employed, for example, dairy products, mushroom, tobacco, and fruit and vegetable production. The various constraints that shape work time practices on forms present real difficulty in controlling hours in some types of farming and are relatively unimportant in others. This suggests that imposition of uniform standards on worktime practices would result in unequal burdens on different parts of the industry. Also, the 2 main classes of hired farm workers, year round and seasonal, have different roles in and commitments to the industry. Both look for desirable work arrangements within their broader objectives for the former of secure positions and learning about the industry and for the latter of obtaining maximum income in the relatively short periods that work is available. Based on the work requirements and the difficulties of staffing a low wage industry worktime practices appear to be farm specific, that is, farmers work out the combination of staff size and work time that will get the job done and whenever practical move to lighten the work and reduce employment requirements by using machines and other new farming technologies. In competitive labour markets they find they must take note of the practices in other industries. As a consequence paid vacations are usual practice for year-round workers, hours vary from season to season with the work load, but overtime and holidays pay are unusual where they are not required by low. For the seasonal worker hours are likely to be long and few if any benefits other than straight time wages are available. The discussion of the exception indicate where practices differ from these general approaches and information on other jurisdictions shows that European farm workers have much more favourable work time arrangements than those that prevail in North America especially in the United States. This situation gives some urgency to the farm industry's concern that competition from the United States limits the extent to which working conditions on farms in Ontario can be improved. For persons interested only in an outline of the argument, an extensive summary is provided.

Fred Lazar: ***Trucking Industry and the Worktime Provisions of Ontario's Employment Standards Act***

The paper focuses on the safety issue and the inequities and inconsistencies arising from the multiplicity of rules and jurisdictions. Although enactment of labour legislation is primarily a provincial right, the federal government does have the right to enact legislation setting minimum standards and conditions of employment for workers engaged in occupations and industries within federal jurisdiction. The many different rules at the federal and provincial levels governing hours and overtime for the truck transportation industry and the lack of a precise dividing line between the areas of federal and provincial jurisdiction have created serious problems for interpretation and enforcement of the laws.

In the area of safety, labour legislation may be inappropriate for ensuring adequate standards for truck drivers and acceptable levels of protection for other users of the public roads. The safety issue has taken on added importance because of the prospect of deregulation of the truck transportation industry.

Joseph B. Rose: ***Construction Workers and Worktime Provisions of Ontario's Employment Standards Act***

This study examines a number of special characteristics of the Construction Industry and there relationship to worktime provisions under the Employment Standards Act. Collective Bargaining has had a profound impact on hours of work and overtime in the industry. Most collective agreements establish a standard 8 hour day and 40 hour week and some provide overtime premiums that are more generous than (double time) found in the Act or in collective agreements in other industries. The exceptions are the roadbuilding, sewer and watermain sectors, where a standard 10 hour day and 50 or 55 hour week are specified in collective agreements. The Act establishes special overtime provisions for these sectors. In general, construction workers are attracted to longer hours and overtime and industry characteristics limit the potential for worksharing.

Monica Townson: ***Domestic Workers and the Employment Standards Act***

This paper looks at the situation of domestic workers in Ontario. The origins of these workers are examined as well as their employment conditions. The problems of definition of the various types of domestic work is discussed. Special attention is paid to the issue of domestic workers under the federal Visa program.

The study also examines the past and new employment standards provisions which apply to those workers and looks at the situation for domestic workers in selected other jurisdictions.